United States Court of Appeals

for the Second Circuit

MEMORANDUM

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

74-2[illegible]700

B

NORMAN A. PLOTKIN,

Petitioner,

-against-

THOMAS P. GRIESA, United States District Judge, WEST SIDE FEDERAL SAVING & LOAN ASSOCIATION, ALLEGHENY MUTUAL CASUALTY CO., THE NEW YORK TIMES CO.,

Respondents,

Norman A. Plotkin,
Plaintiff
v.
West Side Federal Savings & Loan Association, et al.
Defendants.

Memorandum of Law in Support of Petition for a Writ of Prohibition and Mandamus and of Petition for a Rehearing

This memorandum of Law supersedes and replaces Petitioner's Memorandum of Law dated January 7, 1975.

Note: A supplementary Habeas Corpus Memorandum follows after the last page of this Memorandum.

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Note: A supplementary Habeas Corpus Memorandum follows after the last page of this Memorandum.

MEMORANDUM OF LAW

Preliminary Statement

This Memorandum of Law is submitted in support both of the Petition for a Writ of Prohibition and Mandamus herein and the Petition for a Rehearing thereon. This memorandum supersedes and replaces the Memorandum of law dated January 7, 1975.

Petitioner's complaint in the District Court alleges a real estate churning conspiracy by the West Side Federal Savings & Loan Association, the Allegheny Mutual Casualty Company, and the New York Times Co., implemented by a police kidnapping of petitioner (plaintiff) in deprivation of his federally protected rights. It requests injunctive relief and damages.

The petition for a Writ of Prohibition and Mandamus herein seeks: the disqualification of Judge Griesa, the District Judge, on the grounds of personal bias or prejudice; prohibiting conference proceedings from being used as a lawful proceeding and record herein, in violation of the Federal Rules of Civil Procedure and reinstating the complaint, on the grounds of subject matter jurisdiction and due process. The petition for a rehearing adds a further request to amend the complaint adding necessary defendants to make explicit request for relief, on the same facts, by a Writ of Habeas Corpus. It further argues that habeas corpus relief can not

effectively be sought from Judge Griesa who because of his personal bias or prejudice, has already disposed of the case as filed. (see complaint.)

Petitioner's request herein to amend the complaint in order to seek habeas corpus relief on the same set of facts is based on the authority of Supreme Court decision as well as by the history of the Writ of Habeas Corpus itself.

Petitioner has been "in custody" by virtue of restraints unlawfully placed on him, since May 2, 1972. Said "custody" began when the first fradulent and forged alleged process purporting to be a lawful process of a Warrant of Arrest was then fabricated, as set forth herein. It continued, shockingly so, with the unlawful, brutal, seizure and transportation of petitioner, constituting kidnapping, and his unlawful imprisonment on the night of March 19th to March 20th, 1973. It is still continuing by the unlawful taking and continued withholding of petitioner's money, finger-prints, mug shots, and related papers, under color of law (fraudulently styled "released on bail"), by private casualty and savings institutions, the Federal Bureau of Investigation, the New Jersey State Police, and the Jersey City and Fort Lee (New Jersey) police thieves' dictatorships. The imminent danger that petitioner faces of being again kidnapped, under color of law, is precisely because he is now by such restraints "in custody". The repeated expressed and implied threats thereof make such an application

absolutely serious, of special urgency, and in no way frivolous.

Petitioner herein is now restrained of his personal liberty in that he is subject to restraints "not shared by the public generally", which restraints meet the "in custody" requirements of the habeas corpus statute, 28 U.S.C. Sect. 2241 (c) (3), see Hensley v. Municipal Court (1973), 93 S.Ct. 1571, 411 U.S. 345, 351, 36 L. Ed. 2d 294; Jones v. Cunningham, (1963), 83 S.Ct. 373, 371 U.S. 236, 9 L. Ed. 2d 285.

The common law requirements of the writ clearly are also met by these circumstances.

Supreme Court rulings so construing the statutory requirement and invoking the common law history of this writ, as hereinafter shown, conclusively establish the lawful right of petitioner to its issuance herein.

(NOTE: A Supplementary Habeas Corpus Memorandum follows after the last page of this memorandum)

POINT 1

Is Judge Griesa bound by statute and Supreme Court decision to proceed no further in this case?

The statute, 28 U.S.C. sect. 144, entitled "Bias or prejudice of judge," provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding

> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

Petitioner filed the required affidavit (attached to original petition) but has received no relief. This relief is urgently required to prevent recurrence of prejudicial rulings and lack of due process.

Essentially, the affidavit states that Judge Griesa received from defendants representations other than by way of pleadings, or notice of motion, or other due process, and that he accepted such representations as true, again without due process, solely by virtue of defendants' size and prominence, to plaintiff's prejudice, and that there is evidence of Judge Griesa being of a bent of mind or disposition in favor of the New York Times, defendant in a dismissed complaint, companion to the action herein, because of unusually favorable publicity in the New York Times for said Judge.

In Berger et al. v. United States 41 S.Ct. 230, (1921) 255 U.S. 22, the Supreme Court, in an opinion by Mr. Justice McKenna, ruled that an affidavit of prejudice, on information and belief, was sufficient under the statute.

The Court was of the opinion at page 234, that

"The tribunals of the country shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial, free, to use the words of the section, from any "bias or prejudice" that might disturb the normal course of impartial judgment. And to accomplish this end the section withdraws from the presiding judge a decision upon the truth of the matters alleged. Its explicit declaration is that upon the making and filing of the affidavit, the judge against whom it is directed "shall proceed no further therein, but another judge shall be designated in the manner prescribed in *** section twenty-three to hear such matter." And the reason is easy to divine. To commit to the judge a decision upon the truth of the facts gives chance for the evil against which the section is directed. The remedy by appeal is inadequate. It comes after the trial and if prejudice exist it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumption and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient."

POINT 2

Is Judge Griesa bound by the newly amended Public Law 93-512 effective December 12, 1974 to disqualify himself?

This law provides that:

"(a) Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

and further that:

"(b) He shall also disqualify himself in the following circumstances:

"(1) where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;"

This is a case of first impression and it is respectfully submitted that it is a case of great current public importance.

POINT 3

Are motions to dismiss lawful under the Federal Rules of Civil Procedure and constitutionally required due process, when invited, made, and approved orally at a conference called for no stated purpose, with no written or other notice of motion?

Rule 7 (b)(1) of the Federal Rules of Civil Procedure, provide:

> (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

But Judge Griesa invites and hears motion to dismiss in conference with no notice offering petitioner a Hobson's choice.

Rule 16 of the Federal Rules of Civil Procedure, entitled "The Trial Procedure; Formulative Issues," provides

Rule 16. Pre-Trial Procedure; Formulating Issues

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

(1) The simplification of the issues;

(2) The necessity of desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

It is respectfully submitted that no conference procedure makes lawful any dismissal of the action without notice of motion.

POINT 4

Is there a federal question, under 28 U.S.C., sect. 1331, in that the West Side Savings and Loan Association is federally chartered under 12 U.S.C. sect. 1464?

Chief Justice Marshall, in Osborn v. Bank of the U.S.,

9 Wheat 817-828 decided that an institution that was a mere creature of a federal law, depends on a law of the United States and that any suit thereunder arises under the Constitution laws or treaties of the United States.

In Peyton v. Railway Express Agency 62 S.Ct.1171, 316 U.S. 350, the Supreme Court ruled at pg. 1173, that:

> Whether a suit arises under a law of the United States must appear from the plaintiff's pleading, not the defenses which may be interposed to, or be anticipated by it.

POINT 5

Is there jurisdiction under 28 U.S.C. Sect. 1337 entitled "Commerce and anti-trust regulations?"

Congress has provided that:

> The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

The complaint herein is precisely one against a restraint of bona fide commerce.

Moreover, in a case in point, banking and financial institutions are actionable under these statutes where there is no diversity of citizenship, but where interstate movement had been unreasonably obstructed. Brett v. First Federal Savings and Loan Ass'n (1972) 467 F.2d 1155.

POINT 6

Is there jurisdiction under 42 U.S.C. sect. 1983, 1985, and 1986 and 28 U.S.C. sect. 1343?

Acts of commission or omission are actionable under these statutes, Azar v. Conley 456 F2d 1382 (1972), and those who directly assist a state agency in carrying out unlawful acts become part of these wrongs and subject to these statutory sanctions, Balwin v. Morgan 251 F 2d 780, and Burton v. Wilmington, Del. Parking Authority, 815 S.Ct. 856, 365 U.S. 715, 6 L Ed. 26 145.

The purpose of this legislation is:

> "to afford a federal right in federal courts where because of prejudice, passion, neglect, intolerance, or otherwise state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by the State Agencies." Monroe v. Pape, 81 S.Ct. 473, 365 U.S. 167, 5 L.Ed 2d 492.

That is precisely the issue as set forth in the complaint herein.

Conclusion

The Petition should be granted and the Writ of Prohibition and Mandamus should issue to provide the urgent relief required; or in the alternative the three questions submitted should be certified to the Supreme Court.

Respectfully submitted

Dated: January 21, 1975

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SUPPLEMENTARY MEMORANDUM OF LAW ON HABEAS CORPUS

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SUPPLEMENTARY MEMORANDUM OF LAW ON HABEAS CORPUS

Point 1

Does the Writ of Habeas Corpus as provided by the Constitution and the common law afford relief from any and all restraints on personal liberty?

The United States Constitution provides, in Art. I, Sect. 9:

> The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

The United States Supreme Court, in Fay v. Noia (1963), 83 S.Ct. 822, 372 U.S. 391, at page 831, noted (in a decision by Mr. Justice Brennan) that when this Suspension Clause was written into our Constitution:

> ...there was respectable common-law authority for the proposition that habeas was available to remedy any kind of governmental restraint contrary to fundamental law. In this connection, it is significant that neither the Constitution nor the Judiciary Act (conferring habeas corpus jurisdiction in the federal judiciary) anywhere defines the writ, although the Act does intimate, 1 Stat. 82, that its issuance be "agreeable to the principles and usages of law" - the common law, presumably.

Elsewhere in this landmark decision, Mr. Justice Brennan urges, at pp. 827 to 828, that:

> We do well to bear in mind the extraordinary prestige of the Great Writ, habeas

> corpus ad subjiciendum, in Anglo-American jurisprudence: "the most celebrated writ in the English law." 3 Blackstone Commentaries 129. "It is a writ antecedent to statute, and throwing its root deep into the genius of our common law * * * It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I."
>
> ...
>
> Only two Terms ago this Court had occasion to reaffirm the high place of the writ in our jurisprudence: "We repeat what has been so truly said of the federal writ: 'there is no higher duty than to maintain it unimpaired,' Bowen v. Johnston, 1939, 306 U.S. 19, 26, 59 S.Ct. 442, 446, 83 L.Ed. 455, and unsuspended, save only in the cases specified in our Constitution." Smith v. Bennett, 365 U.S. 708, 713, 81 S. Ct. 895, 898, 6 L.Ed.2d 39.
>
> These are not extravagant expressions. Behind them may be discerned the unceasing contest between personal liberty and government oppression.

"Habeas Corpus," said Mr. Justice Brennan, and the Supreme Court, goes far beyond mere form to the very substance of constitutional rights:

> ...Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment....
>
> Idem., pp. 828 to 829.

But common law usage has long recognized this Writ as a proper remedy, not only from governmental restraint, but "to test the legality of a given restraint on liberty," even when nongovernmental, as stated by Mr. Justice Black in Jones v. Cunningham (1963), 83 S.Ct. 373, 371 U.S. 236, 9 L.Ed.2d 285. Mr. Justice Black then went on to give these details at page 375:

> For example, the King's Bench as early as 1722 held that habeas corpus was appropriate to question whether a woman alleged to be the applicant's wife was being constrained by her guardians to stay away from her husband against her will. The test used was simply whether she was "at her liberty to go where she pleased." So also, habeas corpus was used in 1763 to require the production in court of an indentured 18-year-old girl who had been assigned by her master to another man "for bad purposes." Although the report indicates no restraint on the girl other than the covenants of the indenture, the King's Bench ordered that she "be discharged from all restraint, and be at liberty to go where she will." And more than a century ago an English court permitted a parent to use habeas corpus to obtain his children from the other parent, even though the children were "not under imprisonment, restraint, or duress of any kind." These examples show clearly that English courts have not treated the Habeas Corpus Act of 1679, 31 Car. II, c. 2--the forerunner of all habeas corpus acts--as permitting relief only to those in jail or like physical confinement. (Footnotes omitted.)

All restraints, moreover, under the color of law, be they styled "warrant," "arrest," "capias," "bond," or "recognizance," even when not fraudulent, are "what may be called constructive

detention," constituting a cause of action for habeas corpus. So ruled the Court of Appeals, Seventh Circuit, in Mackenzie v. Barrett (1905), 141 F. 964. This is by authority of Supreme Court decisions in Taylor v. Taintor, 16 Wall. 366, 21 L.Ed. 287, and Cosgrove v. Winney, 174 U.S. 67, 19 S.Ct. 598, 43 L.Ed. 897. An English common law case cited in Taylor v. Taintor, supra, establishes habeas corpus as the remedy for such "constructive detention," for "the detention ... is sufficient, if it restrain the party of his right to go ... without a string upon his liberty."

In Ex parte Grice, 79 F. 628 (1896) a United States District Court in Texas ruled identically in the matter of a capias and a recognizance of a co-defendant of John D. Rockefeller.

Formal recognition of these principles was accorded by the Supreme Court, in Jones v. Cunningham, supra, at page 376:

> History, usage, and precedent can leave no doubt that, besides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.

The great Writ of Habeas Corpus, said Mr. Justice Black, in this decision, at page 377:

> ...always could and still can reach behind prison walls and iron bars. But it can do more. It is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose--the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.

Mr. Justice Brennan, in Fay v. Noia, supra, at page 834, cites these words of Mr. Justice Holmes as summing up virtually the whole history of the Great Writ:

> * * * /H/abeas corpus cuts through all forms and goes to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have been preserved opens the inquiry whether they have been more than an empty shell.

It should be observed, as Mr. Justice Brennan noted in a footnote, idem., that Mr. Justice Holmes' views in habeas corpus have long since ceased to be mere dissent* and have become the ruling opinion of the Supreme Court:

> *Frank v. Mangum, 237 U.S. 309, 346-347, 35 S.Ct. 582, 595, 59 L.Ed. 969 (dissenting opinion). The principles advanced by Mr. Justice Holmes in his dissenting opinion in Frank were later adopted by the Court in Moore v. Dempsey, 261 U.S. 86, 43 S.Ct. 265, 67 L.Ed. 543, and have remained the law.

of housing violations

Point 2

Does the Habeas Corpus Act, 28 U.S.C., Sect. 2241, under its "in-custody" provision, afford relief from restraints on personal liberty, when such restraints are other than by actual prison bars?

The term "in custody" in this Act has consistently been held by the Supreme Court to be met by such restraints on personal liberty as are set forth in Point 1 of this Memorandum. The Act provides in 28 U.S.C., Sect. 2241, that:

> (c) The writ of habeas corpus shall not extend to a prisoner unless -
>
> ...
>
> (3) He is in custody in violation of the Constitution or laws or treaties of the United States....

In Jones v. Cunningham, supra, the Supreme Court held, at page 375, that "the use of habeas corpus has not been restricted to situations in which the applicant is in actual physical custody." It noted that habeas corpus is available to an alien seeking entry into the United States, although the alien was free to go anywhere else. Habeas corpus, it noted further, is the remedy for the restraint imposed by induction or enlistment into the military service, although such restraint "is far indeed" from actual physical custody.

In Strait v. Laird (1972), 406 U.S. 341, an unattached reserve officer was held to be entitled to habeas corpus as

being "in custody) merely by virtue of being subject to the authority of the commanding officer.

In Hensley v. Municipal Court (1973), the Supreme Court decided that "a person, released on his own recognizance, is "in custody" within the meaning of the federal habeas corpus statute" referring to numerous similar decisions. Mr. Justice Brennan said in this decision, at page 350:

> Thus, we have consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements.

He noted further, in a footnote below, that:

> Insofar as former decisions, Stallings v. Splain, 253 U.S. 339 (1920); Johnson v. Hoy, 227 U.S. 245 (1913); Baker v. Grice, 169 U.S. 284 (1898); Wales v. Whitney, 114 U.S. 564 (1885), may indicate a narrower reading of the custody requirement, they may no longer be deemed controlling. In none of the decisions on which we today rely, Strait v. Laird, supra; Peyton v. Rowe, supra; Carafas v. LaVallee, supra; Jones v. Cunningham, supra, are these earlier cases even cited in the opinions of the Court.

This "in-custody" provision may not be read narrowly, the Court ruled. Mr. Justice Holmes' dissent has long since become the law, and the writ of habeas corpus must retain "the ability to cut through barriers of form and procedural maze," Harris v. Nelson, 394 U.S. 286 (1969).

"Plainly," concluded Mr. Justice Brennan in this decision, "we would badly serve the purpose and the history of the writ

to hold that under these circumstances the petitioner's failure to spend even ten minutes in jail is enough to deprive the District Court of power to hear his constitutional claim." Idem. pp. 352-353.

Point 3

Does the Writ of Habeas Corpus provide relief against unlawful and unconstitutional restraints on personal liberty imposed under the color of judicial authority, or any abuse thereof?

All of the cases cited hereinabove are precisely those where habeas corpus afforded relief against restraints imposed under judicial authority. The classic case of habeas corpus relief against restraints imposed under color of judicial authority, or by abuse thereof, is that granted by Chief Justice Vaughan discharging from custody the jurors at the Old Bailey trial of William Penn who were committed for contempt of court because they acquitted Penn. Mr. Justice Brennan, recalling this history of habeas corpus, notes that "judicial as well as executive restraints may be intolerable," and that the writ affords relief from both.

> History refutes that notion that until recently the writ was available only in a very narrow class of lawless imprisonments. For example, it is not true that at common law habeas corpus was exclusively designed as a remedy for executive detentions: it was early used by the great common-law courts to effect the release of persons detained by order of inferior courts. The principle that judicial as well as executive restraints may be intolerable received dramatic expression in Bushell's case, Vaughan, 135, 124 Eng. Rep. 1006, 6 Howell's State Trials 999 (1670). Bushell was one of the jurors in the trial, held before the Court of Oyer and Terminer at the Old Bailey, of William Penn and William Mead on charges of tumultuous assembly and other crimes.

> When the jury brought in a verdict of not guilty, the court ordered the jurors committed for contempt. Bushell sought habeas corpus, and the Court of Common Pleas, in a memorable opinion by Chief Justice Vaughan, ordered him discharged from custody. The case is by no means isolated, and when habeas corpus practice was codified in the Habeas Corpus Act of 1679, 31 Car. II, c. 2, no distinction was made between executive and judicial detention.
>
> Idem., at pp. 829-830

Mr. Justice Brennan quotes the very words of Chief Justice Vaughan:

> ...when a man is brought by Habeas Corpus to the Court, and upon retorn of it, it appears to the Court, That he was against Law imprison'd and detain'd, * * * he shall never be by the Act of the Court remanded to his unlawful imprisonment, for then the Court should do an act of Injustice in imprisoning him, de novo, against Law, whereas the great Charter is, Quod nullus libet homo imprisonetur nisi per legem terrae; this is the present case, and this was the case upon all the Presidents [precedents] produc'd and many more that might be produc'd where upon Habeas Corpus, many have been discharg'd * * *.
>
> This appears plainly by many old Books, if the Reason of them be rightly taken, For insufficient causes are as no causes retorn'd; and to send a man back to Prison for no cause retorn'd, seems unworthy of a Court."
>
> Vaughan, at 156, 124 Eng. Rep. at 1016, 9 Howell's State Trials, at 1023.

He also quoted the able summary of the law in Bacon's Abridgement:

[I]f the commitment be against law, as being made by one who had no jurisdiction of the cause, or for a matter for which by law no man ought to be punished, the court are to discharge him * * *; and the commitment is liable to the same objection where the cause is so loosely set forth that the court cannot adjudge whether it were a reasonable ground of imprisonment or not.

Idem., p. 830

Point 4

Does petitioner herein have a cause of action requiring Habeas corpus by a court of the United States?

Habeas corpus jurisdiction in the federal courts has its origin in the Constitution and the common law, as shown, and this jurisdiction is inseparable from them as courts established under the Constitution. As Mr. Justice Brennan has said:

> [H]aving established Federal courts Congress would be powerless to deny the privilege of the writ. Otherwise Article I, section 9 would be reduced to a dead letter.
>
> Fay v. Noia, supra, footnote, p. 381

Explicit statutory authority is further conferred by 28 U.S.C. 1651, the All Writs Act, and 28 U.S.C. 2241 and 2243, the Habeas Corpus Act. The latter specifically provides that "the court shall summarily hear and determine the facts, and dispose of the matter as law and justice require." It also requires the court to "forthwith award the writ or issue an order ... to show cause ... unless it appears that the applicant is not entitled thereto."

That the Habeas Corpus Act is in no way restrictive of this writ's historic function and purpose is shown by its history and interpretation. The Act itself originally dates from 1867, at the very peak of the Radical Republicans' power, which

also enacted the first civil rights act and removal statute. The Supreme Court itself very early interpreted this Habeas Corpus Act as legislation that is:

> ... of the most comprehensive character. It brings within the habeas corpus jurisdiction of every court and of every judge every possible case of privation of liberty contrary to the National Constitution, treaties, or laws. It is impossible to widen this jurisdiction." Ex parte McCardle, 6 Wall. 318, 325-326, 18 L.Ed. 816.
>
> Cited by Mr. Justice Brennan in Fay v. Noia, supra, p. 837.

Under this Act, said Mr. Justice Holmes,

> If the petition discloses facts that amount to a loss of jurisdiction in the trial court, jurisdiction could not be restored by any decision above. It is of the historical essence of habeas corpus that it lies to test proceedings so fundamentally lawless that imprisonment pursuant to them is not merely erroneous but void.
>
> Frank v. Mangum, supra, 237 U.S., at 348, 35 S.Ct., at 595: the dissent that has since become Supreme Court opinion (see Point 1) cited by Mr. Justice Brennan in Fay v. Noia, supra, p. 840.

"Habeas corpus is one of the precious heritages of Anglo-American civilization," concluded Mr. Justice Brennan, in Fay v. Noia, supra, at p. 850. "Habeas lies," he stated, "to enforce the right of personal liberty; when that right is denied and a person confined, the Federal court has the power to release him. Indeed, it has no other power...." Idem. p. 844.

Petitioner's cause of action herein is precisely of that nature. There were and are restraints on his personal liberty, in violation of due process, by falsified, fundamentally lawless "proceedings" that were void ab initio. No decision can lawfully create or restore jurisdiction over petitioner's person to any Jersey City police agency, howsoever styled, by virtue of petitioner's owning real property in said jurisdiction, appearing there by attorney to contest its jurisdiction, and not physically being within its jurisdiction.

Constitution, common law, and statute leave no doubt that issuance of the writ of habeas corpus is not discretionary. For 28 U.S.C. sect. 2243 states that "unless it appears" that petitioner "is not entitled thereto," the court "shall forthwith award the writ or issue an order ... to show cause ..."

Petitioner is clearly entitled to this relief. It is respectfully submitted, by way of analogy, that the comparable New York State habeas corpus statute even provides a thousand-dollar penalty, forfeited by the judge or member of a court who assents to a violation of the statute in refusing to issue the writ, when required. Art. 70, sect. 7003, McKinney's Consolidated laws.

CONCLUSION

The Petition for a Rehearing should be granted, and a Writ of Mandamus issued to order the District Court to reinstate the complaint herein, and permit it to be amended in order to request a Writ of Habeas Corpus herein.

Respectfully submitted,

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(212) MU 2-1686

Dated: January 21, 1975

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

74-2700

NORMAN A. PLOTKIN,
Petitioner,

-against-

THOMAS P. GRIESA, United States District Judge, WEST SIDE FEDERAL SAVINGS AND LOAN ASSOCIATION, ALLEGHENY MUTUAL CASUALTY COMPANY, THE NEW YORK TIMES, CO.,

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DOCUMENTS APPENDED TO PETITIONER'S MEMORANDUM OF LAW DATED JANUARY 21, 1975

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DOCUMENTS APPENDED TO PETITIONER'S MEMORANDUM OF LAW DATED JANUARY 21, 1975

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UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK
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74 Civ. 4426

NORMAN A. PLOTKIN,

Plaintiff,

-against-

WEST SIDE FEDERAL SAVINGS & LOAN ASSOCIATION, ALLEGHENY MUTUAL CASUALTY CO., and the NEW YORK TIMES CO.,

Defendants,

----------x

The plaintiff, NORMAN A. PLOTKIN, by his attorney, GENE CRESCENZI, for his complaint, alleges as follows:

1. This is a civil action whereby plaintiff prays that a preliminary and permanent injunction issue to restrain the defendants, their agents, servants, employees and/or attorneys, and each of them from the continued deprivation of the plaintiff's constitutionally protected right to liberty and property, without due process of law, in concert with any official of any state, or subdivision thereof, directly or indirectly, under the color of any law, ordinance, usage or custom. Plaintiff further prays that a preliminary and permanent injunction issue to restrain the defendants, their agents, servants, employees and/or attorneys and each of them from any act in furtherance of any interstate real estate churning conspiracy and related crimes, and other wrongs, under the color of the law, as is more fully set forth herein, and for damages resulting therefrom.

2. Jurisdiction is conferred on this court by section 1464, Title 12, and Section 1337 Title 28 USC, and Article I, Section 8 of the United States Constitution (Interstate commerce clause), and Article III, Section 2 of the United States Constitution and Section 1983, 1985 and 1986, of Title 42, USC and Section 1331(a) and 1343, Title 28 USC, and for Injunctive Relief by Rule 65 of the Federal Rules of Civil Procedure.

In further support of this court's jurisdiction, plaintiff relies on Title 28, Section 1332 USC in that plaintiff is a citizen and resident of the State of New York. Allegheny Mutual Casualty Co., is a resident of Meadville, Pennsylvania, and the matter in controversy is greater than $10,000.00.

3. Plaintiff, is by profession a historian and (also an investor) and in recent research found a scheme of official corruption, whereby the

plaintiff was deprived of his constitutionally protected right of due process of law, under the color of the law, to promote larceny, and deny legal redress (as in De Castro v. The City of New York, a bona fide workman's compensation claim frustrated by the Chase Manhattan Bank's police incarcerating claimant therein as "psychotic").

4. Plaintiff, acting wholly in good faith, invested his own and borrowed funds in a real property, as is more fully set forth herein, and in direct consequence has been deprived of his property and liberty, under the color of the law, by a real estate churning conspiracy fraudulently represented by its perpetrators and agents as a bona fide commerce. Defendants herein, and each of them have participated and continue to participate in said conspiracy, and in depriving plaintiff of his constitutionally protected rights, and in a cover-up of same, and of neglecting to prevent such deprivations of plaintiff's constitutional rights.

5. On or about November 30, 1970, the New York Times Co., defendant herein, advertised in the New York Times on behalf of J. I. Kislak, Inc., and William Gruman, the sale of a real property for investment purposes, situated in the City of Jersey City, State of New Jersey.

6. As a direct consequence of said New York Times advertisement, on or about March 23, 1971, plaintiff purchased a certain investment property, known as 546 Bergen Avenue, Jersey City, New Jersey, from William Gruman, seller, at and through the offices of J. I. Kislak, Inc., sales agent for said William Gruman. Plaintiff was induced to make said purchase by relying on the good faith and express and/or implied guarantees of the New York Times, J. I. Kislak, Inc., and William Gruman, and that of an official letter of abatement of all housing violations at said property. (See attached Exhibit I).

7. Immediately thereafter, plaintiff was inundated by official notices alleging, by falsifications made in bad faith, housing violations at said property. Relief therefrom was denied regardless of repairs.

8. Plaintiff thereupon protested to seller, to seller's agent and to officials, but was denied all redress by them. Seller's agent, J. I. Kislak, Inc., by its salesman, Irving Frank responded immediately afterward by asking plaintiff, "Do you want to sell it?" (meaning said property, just purchased.) Moreover, these official notices falsely alleging violations all enclosed forms with them that assumed that plaintiff had already sold or was about to sell said property to still another owner.

9. Plaintiff has since expended as legal fees and related expenses a sum in excess of Ten Thousand Dollars to litigate said baseless allegations

of housing violations.

10. Plaintiff has inquired into and publicly identified and exposed the modus operandi of said real estate churning conspiracy and related crimes and other wrongs, as follows:

a. On information and belief, said seller, William Gruman, had been forced to sell said property after owning it only nine months, because of similar abuses, and he was aided and abetted in foisting said fraud on plaintiff by J. I. Kislak, Inc., which receives upwards of Ten Thousand Dollars as commission for each such sale, or fraudulent churning and was further so aided and abetted by real estate lawyers and officials of the City of Jersey City, participating therein, and by the New York Times Co., defendant herein.

b. On information and belief, said real estate churning conspiracy advertises for its victims outside of the State of New Jersey because its corrupt practices are too well known within that state, and also to find a larger and richer market in which to seek victims to fleece.

c. On information and belief, said conspiracy is implemented by a corrupt local police department and its police court (by virtue of a part thereof known as housing court) as the ultimate weapon under color of law, to implement said conspiracy.

d. On information and belief, said conspiracy's ultimate implementation is to coerce investor-victims (after enticing them to invest tens of thousands of dollars into real property in said jurisdiction) to abandon said investments, under threat of committing, under color of law, unconstitutional outrages on such persons by depriving them of liberty through kidnapping and unlawful imprisonment, accompanied by unconstitutional torture, and unconstitutional "orders" to forbid protest against, or exposure of said conspiracy.

e. On information and belief, said conspiracy also benefits, by the ultimate acquisition, at little or no cost, of such property, by one of its co-conspirators.

f. On information and belief, said conspiracy also benefited from using said property as base for unlawful gambling and other unlawful traffic, including illicit alcohol trade, all under the color of the law.

11. On information and belief, the New York Times Co., defendant herein, had knowledge of the real estate churning conspiracy described above, or ought to have had knowledge of it, by reason of the frequency of its advertisements soliciting real estate investments and/or its general familiarity with the real estate investment industry. In reckless disregard of legal and

ethical standards regulating advertising, and in reckless disregard of consumer protection requirements, said company, motivated solely by greed for advertising revenue, did promote said conspiracy against plaintiff by said advertising.

12. On information and belief, said New York Times Co., profited and continues to profit from said conspiracy by accepting advertisements and receiving advertising revenue therefrom, in reckless disregard of plaintiff's constitutionally protected right not to be deprived of his liberty and property without due process of law, and did neglect and continues to neglect to prevent deprivation of same, all to plaintiff's continuing financial damage in excess of ten thousand dollars ($10,000.00).

13. Approximately two months after purchasing said property, plaintiff was advised by agents of the Federal Bureau of Investigation that a tenant residing there, known as Orrico was indicted for gambling conspiracy by a United States Grand Jury for the District of New Jersey, under the name of Lombardo (in U.S. v. Rocaniello, et al.) and plaintiff then and there directed his employees to admit said agents to execute lawful process pursuant to said indictment.

14. Approximately one month thereafter, plaintiff discharged the then superintendent of said property, one Joseph Beaudry, for good cause, including general negligence; on information and belief, said superintendent, during an eight year tenure, did use or permit the use of said property to dispose of goods of doubtful origin, including alcoholic beverages, and brought in undesirable tenants, as shown.

15. Immediately thereafter, said superintendent, acting in concert with an employee of said city of Jersey City (in the office of the Mayor), one Judith Gustafson, brought by said superintendent into said property as a tenant, unlawfully withheld more than half of the rents then due plaintiff, under the pretext of a "rent strike" fraudulently alleging housing violations, which were then obediently supplied by other employees of said City of Jersey City, acting in concert.

16. Thereafter said employee of the City of Jersey City by fraudulent abuse of the Economic Stabilization Act through political manipulation by a local congressman, Dominick Daniels, prevented plaintiff from receiving many thousands of dollars in rents when lawfully due, and in addition caused him to expend many thousands of dollars in legal fees to collect said rents by due process of law.

17. Thereafter employees of the City of Jersey City, including local policemen, in furtherance of said conspiracy, acting in unlawful concert with

other co-conspirators, did, or caused to be done, the following unlawful acts, under color of law:

a. On or about March 1, 1972, two Jersey City detectives, John Geraghty and Gerald Flannely, broke into an apartment at said property, destroying a door, without lawful process (upon inquiry later, they alleged that a search warrant existed, but that it couldn't be seen, not even if the plaintiff came with a "thousand lawyers"). Said apartment's then tenant was acquired by said former superintendent under the name of Esposito, as a butcher, but on information and belief he was then known to said detectives (and then unknown to plaintiff) to be the gambler Carangelo, co-defendant of the aforesaid Orrico-Lombardo in the above-mentioned indictment, U.S. v. Rocaniello, et al. Plaintiff by his attorney's direction, sought to inspect said alleged search warrant, in order to bring an action for damages, but was unlawfully barred from doing so by one Samuel Lanzet, in the Jersey City Police Court, and by the Hudson County Clerk by order of one Frank Verga.

b. That same evening, two other Jersey City Detectives, Dennis Persico and Anthony Guma, entered said property as imposters, fraudulently pretending to be agents of the Federal Bureau of Investigation requesting permission to tap telephone lines in a basement junction box (which permission was denied them by plaintiff personally) on the pretext that there was a warrant for such telephone tapping "at the court" but that it was secret and couldn't be seen, and said detectives then warned plaintiff that he had "better cooperate" with them. On being ordered to leave said property by plaintiff, said detectives were then warmly received by one George Prosniewski as personal friends in his apartment at said property (said Prosniewski, then residing there, was, unknown to plaintiff, a parolled convict).

c. Simultaneously, on information and belief, the new superintendent (replacing Joseph Beaudry) one James Sisk, was arrested in the middle of the night and held in jail overnight, allegedly charged with not paying a half-dozen four year old parking tickets, which then couldn't be found, and thereafter was repeatedly harrassed by baseless disorderly conduct summonses by said Prosniewski. Plaintiff thereupon sought to verify said alleged arrest record as a public document, but was unlawfully denied all access thereto, and was advised by the police court clerk that the true charge was child-beating, and by another that it was the possession of a gun with all such allegations unverifiable by access barred to all public records.

d. Immediately thereafter, on information and belief, said employee of the City of Jersey City, Judith Gustafson, in unlawful concert with

another such employee, one Joseph McDermott, and others, unlawfully, and in violation of management rules, entered by trespass into a locked closet at said property, and strewed garbage there, and thereafter other policemen of said City of Jersey City unlawfully and repeatedly entered said property and forcibly took keys from plaintiff's employees, coercing them into acquiescence by making unlawful threats of arrest, and by such means trespassing into locked storage areas.

18. In pursuance of said conspiracy, plaintiff was immediately thereafter charged with a housing violation (see attached exhibit II), on its face invalid and a flagrant abuse of process, for complying by his employee, with an order of the Hudson County District Court to plaintiff's attorneys after inspection by said court (see attached exhibit III) and after lengthy and costly litigation. Said order was made at the express request of the signers of such violation, for their personal benefit.

19. Plaintiff refused to knuckle under to this real estate churning conspiracy. He answered said baseless violation charge (never served personally on him anywhere, and not personally being within the jurisdiction of the City of Jersey City, or its police court) by an attorney-at-law with the resident manager of said property, accompanied by said letter of the Hudson County District Court. This answer was pursuant to applicable statutes, usage, and Supreme Court rule of the State of New Jersey, providing for appearance by attorney and litigation of such violation as a civil proceeding. Plaintiff's attorney was to contest as a malicious abuse of process, said violation, as the matter therein was res judicata, as described above.

20. Such refusal to knuckle under unfuriated participants in said conspiracy, and a local real estate lawyer, Charles N. Kors (brother of the real estate broker, who had formerly managed said property), forged or caused to be forged as a part-time local police court judge in said City of Jersey City a paper purporting to be a lawful process of the State of New Jersey, in the form of a warrant of arrest against plaintiff and in fact an unconstitutional Bill of Attainder, in furtherance of the police and police court and real estate lawyer thieves' conspiracy, described above. The pretext invented to justify this forged paper was that plaintiff, by not being within the jurisdiction of said police court was in contempt of said court, and thereby committed a crime against the State of New Jersey. Said Charles N. Kors further fraudulently alleged that plaintiff's retaining an attorney was a non-appearance and a crime.

21. Said Charles N. Kors, knowing that plaintiff was not within said jurisdiction, and that the lawful authority of said Police Court was confined

to said jurisdiction, and that not being within said jurisdiction was not and could not lawfully be construed to be a crime, conspired with others to deprive plaintiff of his constitutional right to liberty, by fraudulent use of said Charles N. Kors' access to the inner mechanical workings of the criminal justice system of the State of New Jersey and of the United States of America, to kidnap the plaintiff, and forcibly take him away into said jurisdiction, under color of law, and/or subject him to the threat thereof, as is more particularly set forth hereinbelow.

22. Upon plaintiff's continued refusal to knuckle under and abandon his investment, said Charles N. Kors, despite the fact that he had already adjudicated and disposed of said baseless violation allegation as not proven, further conspired with Robert F. Cavanaugh, another part-time Jersey City police court judge and real estate lawyer, and others, to deprive plaintiff of his constitutionally protected liberty, without due process of law. Said conspiracy was implemented in secret and by stealth by kidnapping plaintiff on March 19, 1973, from the streets of the Borough of Fort Lee by a policeman, William Corcoran and others. Said William Corcoran and others assulted plaintiff, handcuffed him, forcibly carried him away, tortured him, and unlawfully imprisoned him in the cellar under the office of Burt Ross, Mayor of Fort Lee, (see attached exhibit IV), and thereafter in a cage above said Jersey City Police Court.

23. The aim of said conspiracy was to bring plaintiff forcibly into the jurisdiction of the Jersey City Police Court, by unlawfully abducting him under the color of the law, and said Charles N. Kors was avowedly and unlawfully motivated therein by personal interest.

24. In furtherance of said conspiracy and in direct preparation for the above-described kidnapping, said conspirators, and others did forge a paper and fraudulently alleged it to be a lawful process of the State of New Jersey, by which:

a. Plaintiff was falsely represented to be a defendant in a non-existent case charged by the State of New Jersey.

b. Plaintiff was falsely represented by a gross forgery, to be subpoenaing himself, to give testimony for himself in said non-existent case, in violation of the fifth and fourteenth amendments and of every procedure admissible in any bona fide court in any civilized country.

c. Said forged paper was slipped under the door of plaintiff's business premises situated wholly outside the jurisdiction of the police court of the City of Jersey City in an envelope with no address or marking on it whatsoever, and without even informing the plaintiff of its existence.

d. Plaintiff discovered said forged paper lying in a heap of old papers, approximately three months after it was placed there.

25. In furtherance of said conspiracy, and in direct preparation for the above described kidnapping, Robert F. Cavanaugh, acting under the color of the law in unlawful concert with said Charles N. Kors, and others, did forge, or cause to be forged, another paper purporting to be a lawful process of the State of New Jersey, in the form of a warrant of arrest against plaintiff (see attached exhibit V). The pretext fabricated for this forged paper was identical to that formerly used, described above, but this time was also based upon the second forged paper, falsely represented by said conspirators as plaintiff's subpoena to plaintiff, wholly unknown to plaintiff, as described above.

26. Plaintiff had previously exposed all parts of said conspiracy by numerous letters of complaint to public officials circulated in hundreds of copies, including a complaint to the Hudson County Bar Association, all without redress. In reprisal therefor, and in violation of plaintiff's First Amendment rights Joseph S. E. Verga, another real estate lawyer and part-time Jersey City Police Court Judge held up plaintiff's letter to Joseph Tumulty of said Bar Association, when plaintiff was kidnapped and dragged before him, under the color of the law and warned plaintiff not to write such letters again.

27. On information and belief, no official record was kept by any public official of any proceeding alleged to be judicial by them as a cover-up for their crimes and wrongs described above, nor of any acts in furtherance thereof by any of them done under the guise of being the acts of a judge on the bench.

No such proceedings became thereby lawful judicial ones, but they were all unlawful, conspiratorial proceedings perpetrated by a de facto political police thieves dictatorship, fraudulently styled a "court", designed to cloak fraudulently these officials' corrupt access to the criminal justice system of the State of New Jersey and the United States of America. Said officials were not then lawfully judges on the bench, but were in fact common law criminals, commonly known as thugs, who corruptly used their official positions to become modern robber barons unlawfully using said criminal justice system to implement and cover-up their crimes by coercing and silencing plaintiff, as described above.

Plaintiff, moreover, was thereafter advised that the only way to free himself from the clutches of said intolerable conspiracy was to sell said property.

28. Plaintiff was rescued from the unlawful imprisonment, described above, by his investment partner, who was compelled to surrender his bank passbooks as a ransom for plaintiff, styled bail, but with no receipt therefor whatsoever. Thereafter, plaintiff was unable to repossess said bankbooks for their rightful owner as required by him, until he delivered and surrendered his own bankbook, as a new ransom, with an equivalent sum on deposit, (or in lieu thereof, his own person), to an agent of the Allegheny Mutual Casualty Company, defendant herein, said bankbook being #1-751370 issued to plaintiff by the West Side Federal Savings and Loan Association, in the City of New York, State of New York.

29. Plaintiff was compelled to sign an assignment to said Allegheny Mutual Casualty Company of said bank account for a fictitious value received, when in fact plaintiff received nothing of value whatsoever from said Allegheny Mutual Casualty Company, and said defendant misrepresents plaintiff's signature to cover up the unlawful fruits of the above-described political police thieves kidnapping-for-ransom conspiracy.

30. On information and belief, the defendant Allegheny Mutual Casualty Company has fraudulently represented that plaintiff signed said assignment of his own free act and deed, when in fact plaintiff never consented to this or any other part of said kidnapping-for-ransom scheme against him. Plaintiff signed said assignment, not as his free act and deed, but only to escape from the above-described brutal kidnapping, torture and unlawful imprisonment by power-drunk, armed officials, wearing policemen's badges and black judicial robes. In addition, a sum of money amounting to $306.00 was extorted by said defendant, with no receipt therefor on the pretext of a lawful fee for a lawful bond, and on information and belief, part thereof was paid by said defendant to corrupt officials, as hereinbelow set forth in detail.

31. On information and belief, the clerk of said police court, one John O'Keefe, was thereafter indicted by a Grand Jury of the County of Hudson, State of New Jersey, for receiving the proceeds of a kickback scheme extending over several years including all times mentioned hereinabove, whereby policemen and the clerk of the police court of Jersey City would receive a part of the fee paid to bail bondsmen, (see attached exhibit VI) and plaintiff verily believes that money wrongfully received by defendant Allegheny Mutual Casualty Company was in part paid to corrupt officials as part of said kickback.

32. Plaintiff has advised West Side Federal Savings and Loan Association, defendant herein, that his bankbook was unlawfully obtained by another, under duress, and has requested immediate payment to him of his own money,

deposited by him in his own account at said Association, and offered to indemnify and save said Association harmless, as is usual banking practice when withdrawing funds without a passbook. But said Association has refused plaintiff's request and continues to hold plaintiff's money, without plaintiff's consent, for the unlawful use or disposition by defendant Allegheny Mutual Casualty Company, in furtherance of the conspiracy set forth above to deprive plaintiff of his property and liberty without due process of law, under the color of the law.

33. Plaintiff is in urgent need of his own money, unlawfully kept from him by the West Side Federal Savings and Loan Association and the Allegheny Mutual Casualty Company. One of the aims of the conspiracy set forth above is to bankrupt plaintiff by depriving him of his property, and the lawful use and fruits thereof, and the relief sought herein is urgently needed to stave off impending financial disaster.

34. Plaintiff is entitled to a preliminary injunction to restrain the West Side Federal Savings and Loan Association and the Allegheny Mutual Casualty Company from holding plaintiff's money in account #1-751370 in the West Side Federal Savings and Loan Association from him, and from retaining, using, or seeking to use any assignment of said account, and plaintiff hereby declares any such assignment not to be his free act and deed, and to be null and void as an instrument of his free will, and hereby confirms that he directed, and continues to direct the West Side Federal Savings and Loan Association to pay all money in said account to plaintiff personally.

35. Plaintiff is entitled to a preliminary injunction to restrain the New York Times Co., defendant herein, from advertising in the New York Times, or accepting advertisements in the New York Times that solicit funds from investors to purchase or finance any real property offered for sale by J. I. Kislak, Inc., and further to restrain said New York Times Co., from advertising for funds from investors to purchase or finance any real property offered for sale for investment and earnings in the State of New Jersey, said preliminary injunction to endure until wrongs done to plaintiff under the color of the law, as set forth above, have been redressed in their entirety.

36. Plaintiff is entitled to damages from the defendants for deprivation of plaintiff's constitutionally protected property and liberty, conspiracy to so deprive plaintiff, and/or neglect to prevent such deprivation, as follows:

A. From the New York Times Co., for participating in said conspiracy and neglecting to prevent it.

B. From the Allegheny Mutual Casualty Co., for participating in said conspiracy and neglecting to prevent it.

C. From the West Side Federal Savings and Loan Association, for participating in said conspiracy, and for refusing to return plaintiff's lawful property, entrusted for deposit pursuant to said Association's advertisements for interest bearing accounts in the New York Times.

WHEREFORE, plaintiff prays:

1. That a preliminary and permanent injunction issue restraining defendants, their agents, servants, employees and/or attorneys from:

a. Withholding plaintiff's money deposited by him in account #1-751370 in the West Side Federal Savings and Loan Association from him, and ordering said Association to pay this money to plaintiff immediately.

b. Withholding plaintiff's passbook for said account from him and ordering the Allegheny Mutual Casualty Company to return to plaintiff his bankbook for said account.

c. Advertising or accepting for advertising in the New York Times any solicitation of funds from investors to purchase or finance any real property offered for sale by J. I. Kislak, Inc., or any real property offered for sale for investment and earnings in the State of New Jersey, until wrongs done to plaintiff under the color of the law as set forth above have been redressed in their entirety.

d. Withholding from plaintiff money amounting to $306.00 paid to the Allegheny Mutual Casualty Co., on or about March 20, 1973, as an unlawful condition for plaintiff to escape from the unlawful and intolerable imprisonment of plaintiff by officials of the City of Jersey City, and ordering and adjudging said money to be the lawful property of the plaintiff and to be returned to him.

e. Paying or transmitting any money to any official of the City of Jersey City on the pretext that any such official has lawful jurisdiction over the person of the plaintiff in consequence of the conspiracy set forth above, and/or in consequence of plaintiff acquiring or retaining title or any financial interest in any real property in said jurisdiction, and from advertising to solicit funds from investors to purchase or finance any real property in the State of New Jersey, while in fact or in law ownership of real property, and/or litigation in defense of same, by attorney, or exposure of official wrongdoing or any other use of a first amendment right is construed in any way whatsoever to be a crime against the State of New Jersey.

2. That actual and punitive damages in the amount of Five - Million ($5,000,000.00) Dollars, be adjudged against defendants for conspiring to deprive plaintiff under color of law, of his constitutionally protected rights, not be deprived of property and liberty, without due process of law, and for actually depriving plaintiff of said rights, and for neglecting to prevent such deprivation, and together with costs and disbursements of this action.

DATED: October 9, 1974

Respectfully submitted,

GENE CRESCENZI
Attorney for Plaintiff
415 Lexington Avenue
New York, N.Y. 10017
(212) MU 2-1686

DEPARTMENT OF HEALTH & WELFARE

DIVISION OF PERMITS AND INSPECTION SERVICES

THOMAS J. WHELAN — MAYOR

FRED W. MARTIN
DIRECTOR

CITY HALL
JERSEY CITY, N. J. - 07302

EDWARD T. SCALA
DIRECTOR OF PERMITS
AND INSPECTION SERVICES

March 8, 1971

TO WHOM IT MAY CONCERN:

Re: 546 Bergen Avenue

The records of this Bureau indicate that all of the violations of the Property Maintenance Code W138 forwarded to the owner of record have been abated.

Very truly yours,

Felix F. Gabrush
Bureau Chief

(EXHIBIT I)

STATE OF NEW JERSEY } MUNICIPAL COURT
vs. CITY of JERSEY CITY
Mr. Norman Plotkin PART II
2400 Hudson Terrace, Ft. Lee
New Jersey

COMPLAINT – SUMMONS

Defendant.

Joseph Mc Dermott, Sanitary Inspector residing at Division of Health, City Hall
complainant street

280 Grove St., Jersey City New Jersey, says that Mr. Norman Plotkin
municipality defendant

residing at 2400 Hudson Terrace, Fort Lee, New Jersey,
street municipality

on March 6, 1972, in Jersey City, Hudson County, New Jersey did
month - day

on information and belief of complainants whose names are listed below, violate the provisions of an Ordinance entitled, "An Ordinance Adopting a Codification of the Ordinances of the City of Jersey City, known as the "Jersey City Code", adopted May 4, 1972, specifically the provisions of Chapter 22, Article V, Sec. 22(e) of said Code, in that he, being the owner and/or agent for property known as 546 Bergen Ave., Jersey City, New Jersey, did allow or permit garbage receptacles to be placed on the fourth floor of said premises so as to constitute or contribute to the creation of a nuisance.

Wherefore, this complainant prays that the said Mr. Norman Plotkin
defendant

may be summoned to appear and be dealt with according to law.

Joseph Mc Dermott
Signature of Complainant

Subscribed and sworn to
before me March 9, 1972, 196

Magistrate,
Clerk, Municipal Court of Jersey City

Judy Gustafson
Ethel Welch
Barthan Pankel
Ben Weinstein
Rhoda Kaisen

SUMMONS

TO: Mr. Norman Plotkin
Name of Defendant

Whereas, the above complaint, which is hereby made a part of this summons, has this day been made:

Therefore, you are hereby summoned to appear before the Municipal Court of Jersey City, Part II, located at 765 Montgomery Street, in Jersey City, N. J., 16th day of March, 1972, at 9:00 o'clock (a. m.) to answer the said complaint.

If you fail to appear a warrant will issue for your arrest.

Witness:
This 9th day of March, 1972
Jeremiah O'Callaghan Magistrate
Clerk

(EXHIBIT II)

15

RETURN

I hereby certify that I served the within summons by delivering a copy to the defendant personally.

Date: ______

(Name and Title of officer)

RETURN

I hereby certify that I served the within summons by leaving a copy at the registered office of the defendant corporation with ______

______ the person in charge thereof.

Date: ______

(Name and Title of officer)

RETURN

This is to certify that the defendant could not be found nor has he any abode in this county.

Date: ______

(Name and Title of officer)

Docket T Case No. 157

MUNICIPAL COURT
of the City of Jersey City in Hudson County, N. J.

PART II

THE STATE OF NEW JERSEY

vs.

~~[illegible]~~

Defendant.

Complaint With Summons

March 16, 1972

Part Two

9 a. m.

Section 22 (e)

[illegible] 1/21/72 [illegible]

[illegible]

Cknowl for def. to 3/23/72

4/12/72 adj. to 5/2/72 Notify

5/2/72 Mr Schwartz moved to dismiss on lack of jurisdiction claiming def not actually served. motion denied

Mr Schwartz then asked for a adjournment

motion denied

Issue warrant for his arrest. Kos

upon arrest bail $500 - Kos

6/15/72

Issue Warrant for Arrest. $3,000.00 Bail

RETURN

I hereby certify that I served the within summons by mailing it to the defendant at ______

______ this being his (her) last known address.

Date: ______

(Name and Title of officer)

RETURN

I hereby certify that I served the within summons by delivering a copy to ______

(Name and title of corporate officer or other authorized agent)

Date: ______

(Name and Title of officer)

RETURN

I hereby certify that I served the within summons by leaving a copy at the defendant's usual place of abode with ______ a member of his (her) family over the age of 14 years then residing with him (her).

Date: ______

(Name and Title of officer)

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
THOMAS F. CARLIN
JUDGE

HUDSON COUNTY COURTHOUSE
ADMINISTRATION BUILDING
JERSEY CITY, N.J. 07306

May 1st, 1972

To Whom It May Concern:

Please be advised that I examined the premises at 546 Bergen Avenue, Jersey City, New Jersey on October 19th, 1971. The occasion for my visit was a general inspection of the premises resulting from tenants' complaint relative to the condition of the building. I made an inspection of the garbage disposal condition and found this to be adequate and satisfactory. If my memory serves me correctly the City also inspected the facility and has the same feeling as I.

Very truly yours,

Thomas F. Carlin

THOMAS F. CARLIN, J.S.C.

TFC:MVG

(EXHIBIT III)

Burt Ross
Mayor
Borough of Fort Lee

Telephone: 947-9400

309 Main Street

February 9, 1973

Mr. Norman Plotkin
2400 Hudson Terrace
Fort Lee, N. J.

Dear Mr. Plotkin:

Mayor Ross asked me to inform you that he had received your two telegrams and letter addressed to his home, and that all are being referred to our Police Commissioner, Jeff Kleiner.

You will no doubt hear from him regarding this matter.

Very truly yours,

Helen Cole
Secretary to Mayor Ross

March 23, 1973

Dear Mayor Ross:

I did indeed "hear from" your Police Commissioner, Jeff Kleiner, on March 19, 1973, but in a most astounding way. I was then unlawfully abducted and beaten by your policeman, William Corcoran, et al.--at least six of them--to transport me unlawfully into the jurisdiction of the Jersey City police, against whom I had formal complaint for abuses made against private property. Their reprisal, this abduction fraudulently made under the color of the law, is all the more outrageous by the collusion of your own policemen, which was the subject of my complaints to you acknowledged above.

I have previously complained to Jersey City Mayor Paul Jordan and to Sulzberger-Rolfe, Inc. requesting the dismissal of their garbage can inspector, Joseph F. McDermott, and Superintendent Frank Cafariello, respectively, for trespassing in my apartment in an extortion conspiracy in 1971 (threatened and actual garbage can violation allegations after official inspection approv In 1972 I extended my complaint to include Vincent Frank, a Jersey City patrolman, trafficking in fraudulent arrest warrants, in collusion with this McDermott, and Charles Kors, a private lawyer, and brother of Kors and Ostrow, Realtor partner, operating through your Police Detective Joseph Spina. Although barred by law, these were naked attempts to prevent recovery of property and collection of debts by due process of law. At election time I further complained to Martin Aranow, nominal head of one group of wrongdoers behind McDermott, and to your Police Chief, Theodore Grieco.

In January I further complained about Patrolman William Corcoran banging on my door on behalf of these wrongdoers. I then filed a petition in the New Jersey Supreme Court to stop these outrages (a copy is attached for your guidance). Their rules bar local maintenance of any process before them.

(EXHIBIT IV)

Despite this, and the legal bar cited above, your policemen persisted in the grave wrongs on the pretext of still another fraudulent process by a private lawyer, Robert Cavanaugh, from Bergen County, in collusion with Kors, fabricated, I am told, on February 15, 1973, on the fraudulently-made garbage can ma charge of McDermott*that was disposed of last year. (*Copy attached.)

When I explained this to your policeman William Corcoran, I was violently pulled from my car, which was left astride the road, my wallet torn from my h hand, my pocket torn, my AAA card with bail bond certificate badly crushed (I retained it only by holding it tightly). I was then falsely, maliciously, and fraudulently charged with a crime and a parking violation (Summons E 19250).

In your police station, below your office, I was formally prevented from posting bond bytyour Sergeant Sparta, and the phone was forcibly ripped from ~~his~~ hand when I explained the above to xmkx the bondsman. At first the bondsman would have taken my personal check, but on instructions from your detective he eventually refused all bail. No lawful process was their concern.

[illegible] telegrams of complaint, all in one file, were prominently displayed to me there, with evident grins of malicious satisfaction on your policemens'face They made it clear that their only aim was to put me physically, although unlawfully, in the hands of the Jersey City police to stop my lawful complaint

A Jersey City detective, John Santa Maria, then took me, and in the jurisdiction of Fort Lee, tortured me and reviled me in contemptuously familiar, disgusting, and defamatory language, calling me a "slumlord" and saying in a menacing tone, "raise the rents, will you?"

At the time ofx this abduction I was on my way to file legal papers in a suit against the Price Commission, after having just received evidence of the wrongful collusion of a congressman in these wrongs. I have been gravely impe in the prosecution of this legal action by your policemen's crimes and other wrongs.

I again demand the dismissal of your offending policemen who use their police authority unlawfully to suppress complaints. I also demand the return to me of your and Jersey City fraudulent arrest records and the nullification of all of their charges.

CC.: U.S.Atty.
N.J.Atty.Gen.
FBI Act.Dir.

Enc.

Yours truly,

Norman A. Plotkin

Norman A. Plotkin

COURT

Jersey City Municipal Part II

COUNTY OF Hudson

COURT DOCKET NUMBER(S): C- T-781

COURT CASE NUMBER: 0906

COMPLAINT RESULT OF CASE RETURNED BY PROSECUTOR

PRIOR CASE DOCKET NUMBER: C-T-157 T-665-T-2

68. 19

Defendant: NORMAN PLOTKIN

Address: 2400 Hudson Terrace,

City, State: Fort Lee, New Jersey

COMPLAINT

Complainant John Moran, Court Clerk (NAME OF COMPLAINANT) of Municipal Court Part II (ADDRESS OF COMPLAINANT OR ACTIVE DEPARTMENT)

Residing at 769 Montgomery Street, Jersey City, N.J. (ADDRESS OF PRIVATE CITIZEN COMPLAINANT) Upon oath says that, to the best of (his) (her) knowledge, information and belief, the named defendant on or about the

8th day of February, 1973 in the city of Jersey City (MUNICIPAL CODE NO.) County of Hudson N.J.

did:

Did fail to appear in Part two Municipal Court for trial on violation of City Ordinance known as "Jersey City Code" Chapter 22, Article V, Sec. 22(e) of said Code, on premises known as 546 Bergen Avenue, where garbage receptacles were placed on the fourth floor, so as to constitute or contribute to the creation of a nuisance.

Charge Number 1 N.J.S. 2 A: 10-1	Charge Number 2 N.J.S.	Charge Number 3 N.J.S.

Subscribed and sworn to before me this 14th day of February 19 73

Signed Betty Barrett Dy clerk (NAME AND TITLE OF PERSON ADMINISTERING OATH)

Signed (COMPLAINANT)

To any peace officer or other authorized person. Pursuant to this warrant, you are hereby commanded to arrest the named defendant and bring (him) (her) forthwith before this court to answer the foregoing complaint.

Bail has been fixed by Judge Cavanaugh in the amount of $3,000 or (Specify condition of release, e.g. ROR)

Date Warrant Issued February 14, 1973

Court Appearance Date Time (A.M.) (P.M.)

(SIGNATURE OF JUDGE OR CLERK)

DATE OF INITIAL APPEARANCE

COURT ACTION (Cases wherein judgment or Conditional Discharge is entered in this court)

CHARGES	WAIVER TRIAL COURT	PLEA	DATE OF PLEA	ADJUDICATION OF COND. DISCH.	DATE	JAIL TERM	SUSP.	FINE	SUSP.	COSTS	SUSP.	PROBATION TERM	COND. DISCHARGE FEE
Number 1													
Number 2													
Number 3													

PROBATION TERM SUPERVISED ☐ YES ☐ NO

OTHER ACTION BY THIS COURT

DATE

1 DEFENDANT DISCHARGED AT HEARING AS TO PROBABLE CAUSE PROSECUTOR GIVEN RIGHT TO FILE

3 DEFENDANT HELD FOR GRAND JURY CRIMINAL COMPLAINT RECORD BAR ENDORSED

2 NO ACTION BY THIS COURT COMPLAINT REFERRED TO PROSECUTOR

INSTITUTION TO WHICH SENTENCED

4 Other (Specify)

BAIL INFORMATION

DATE	AMOUNT BAIL SET	REL. ON BAIL 1	R.O.R. 2	COMMITTED DEFAULT 3	COMMITTED WITHOUT BAIL 4	PLACE COMMITTED

SURETY COMPANY - PERSON POSTING BAIL - RELEASED IN CUSTODY OF - ADDRESS

PROSECUTING AND DEFENSE COUNSEL INFORMATION

PROSECUTING ATTORNEY	PRIVATE 1	STATE 2	COUNTY 3	MUNICIPAL 4	OTHER 5	DEFENSE COUNSEL	NONE 1	RETAINED 2	PUBLIC DEFENDER 3	ASSIGNED 4	OTHER

MISCELLANEOUS INFORMATION

JUDGE DATE

(EXHIBIT V)

ORIGINAL

Jersey City Court Clerk Indicted On Bail-Bond Kickback Charges

N.Y.T. Aug 2, 1947
Thursday 39

By EDWARD HUDSON
Special to The New York Times

JERSEY CITY, Aug. 1—The chief clerk of this city's Municipay Court—an original member of the ousted Kenny political machine—was indicted here today on bribery charges involving a "systematic" $5 kickback scheme on every bail bond sold to city prisoners.

Immediately after the Hudson County grand jury handed up its indictment of Chief Clerk John F. O'Keefe, the Acting County Prosecutor, Edwin H. Stern, asked Mayor Paul T. Jordan to conduct an "immediate inquiry" into alleged police involvement.

According to an assistant prosecutor, the conspiracy involved "scores" of city policemen who were given $1 each for every $5 kickback for their cooperation with Mr. O'Keefe.

During a four-year period, county officials estimated, the conspiracy amounted to $10,000 a year.

City Gets Testimony

In an unusual legal move, Mr. Stern requested, and Superior Court Judge A. Alfred Fink approved, an order turning over to "appropriate city officials" the secret grand jury testimony of the number of city policemen who were said to have been involved in the conspiracy.

A county law enforcement official said the city would be requested to take departmental action that would result in the ouster of every police officer who was found to have taken part in the scheme.

A spokesman for Mayor Jordan said that the Mayor had already initiated his own investigation of the police and that the conspiracy had occurred with the prosecutor's request.

Today's indictment follows scores of others against members of the Democratic organization headed by John V. Kenny that came into power here in 1949. In fact, Mr. O'Keefe was an original Kenny "49'er" and he was appointed chief clerk of the Municipal Court in 1950 when Kenny was Mayor here.

Although the indictment said that the conspiracy had occurred between 1939 to June of this year, a county law enforcement official said it had begun long before in "time immemorial."

Downfall of Kenny

Mr. O'Keefe, who is 53 years old, could not be reached for comment at this office in Municipal Court. According to a summons issued against him this morning, he is scheduled to be arraigned here Friday before Superior Court Judge Joseph P. Hanrahan.

If convicted, Mr. O'Keefe would forfeit his $14,247-a-year post and face up to six years imprisonment and $2,000 in fines.

Kenny was recently released from Federal prison on grounds of failing health after receiving a long sentence for income-tax evasion. The charge against him and a number of other political lieutenants, including the former Mayor and City Council president here, broke the back of his organization and led to the election of Mayor Jordan and the reform forces that supported him in his re-election bid in May.

(EXHIBIT VI)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X CIVIL ACTION

NORMAN A. PLOTKIN,

Plaintiff

#74 CIV 4426

against

WEST SIDE FEDERAL SAVINGS & LOAN ASSOCIATION, ALLEGHENY MUTUAL CASUALTY CO. and the NEW YORK TIMES CO.

Defendants

ANSWER OF DEFENDANT, WEST SIDE FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW YORK CITY

- X

Defendant, WEST SIDE FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW YORK CITY, sued herein as "WEST SIDE FEDERAL SAVINGS & LOAN ASSOCIATION" by its attorney, EDWARD F. MURPHY, ESQ., answering the complaint of the plaintiff herein, respectfully alleges as follows:

Denies knowledge and information sufficient to form a belief as to each and every allegation set forth in the complaint except admits as follows:

1. That on April 12, 1973, the plaintiff opened a savings account No. 751370 with the Association entitled "Norman A. Plotkin", the initial deposit being $1,700.00 and the present balance with interest computed to September 30, 1974 being $1,719.03 plus interest computed daily at the rate of 5-1/4% per annum.

2. That at about the time of opening the said savings account, the Association received an assignment of the said savings account dated April 12, 1973, executed by the plaintiff as assignor to the defendant, Allegheny Mutual Casualty Company as assignee, a copy of which is annexed hereto and marked "Exhibit A".

3. That the plaintiff and the said defendant, Allegheny Mutual Casualty Co., each are claimants to the said savings account.

4. That as to said savings account the Association is a stakeholder and cannot pay the proceeds of the same to either claimant without being in jeopardy of double payment.

WHEREFORE, WEST SIDE FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW YORK CITY demands judgment dismissing the complaint as to said defendant and providing that said defendant deposit the proceeds of the hereinbefore identified savings account into this court for the court's determination as to the lawful owner thereof.

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...w York
...ty

EDWARD F. MURPHY
Attorney for defendant, West Side Fe
Savings and Loan Association of
New York City
1790 Broadway
New York, New York 10019
(212) CI 5 -4700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

'68 Civil Action No. 3411

NORMAN A. PLOTKIN,

Plaintiff

-against-

SANFORD SILVER, MIRIAM MILLER, IRVING MILLER, ELLEN MEADE, JAMES J. KELLEY, FRANCIS K. LOONEY, JOHN A. BIANCHI, ALAN D. MILLER, ANNE E. BERNSTEIN, JAMES ALLEN, and LOUIS J. LEFKOWITZ,

Defendants

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the verified complaint and the affidavit of the plaintiff attached hereto, it is

ORDERED that the defendants hereinshow cause before this court at the United States Court House, Foley Square, New York, N.Y., on the 27th day of August 1968 at 10 o'clock A.M., or as soon thereafter as counsel can be heard, why a preliminary injunction Pursuant to FRCP 65 should not issue herein as follows:

1. Enjoining the defendants Sanford Silver, Miriam Miller, and Irving Miller, separately and jointly, their agents, servants, employees, and attorneys and all persons in active concert and participation with any of them, pending the final hearing and determination of this action, from engaging in or causing any of the acts specified that the said Sanford Silver is to be restrained from doing, as hereinafter provided;

2. Enjoining the defendant Alan D. Miller, Commissioner of Mental Hygiene of the State of New York, his agents, servants, employees, and attorneys and all persons in active concert and participation with him, pending the final hearing and determination of this action, from allowing any personnel, employee, or facilities of the Department of Mental Hygiene of the State of New York to be used by the said Sanford Silver, Miriam Miller, or Irving Miller, their agents, servants, employees, and attorneys and all persons in active concert and participation with any of them, from any professional, private or official service, employment, or function involving the plaintiff, Norman A. Plotkin.

3. Enjoining the defendant James Allen, Commissioner of Education of the State of New York, his agents, servants, employees, and attorneys and all persons in active concert and participation with him pending the final hearing and determination of this action, from assigning, authorizing, or allowing any official or employee of the Department of Education of the State of New York, to intimidate,

coerce, or attempt to intimidate or coerce the plaintiff, Norman A. Plotkin, by telephone or in any other way, to prevent or hinder him from making lawful inquiries concerning the official records of physicians licensed by the State of New York.

4. Enjoining the defendants Louis J. Lefkowitz, Attorney General of the State of New York, his agents, servants, employees, and attorneys and all persons in active concert and participation with him, pending the final hearing and determination of this action from appearing as attorney for the said Sanford Silver, his agents, servants, employees, and attorneys and all persons in active concert and participation with him, including the defendants herein, John A. Bianchi, and Anne E. Bernstein, for their private wrongs committed under the color of the law; and

5. It appearing to the court that defendant Sanford Silver is about to commit the acts hereinafter specified and that he will do so unless restrained by order of this court, and that immediate and irreparable injury, loss and damage will result to plaintiff, before notice can be heard in opposition to the granting of a temporary restraining order, in that plaintiff's constitutional rights to freedom to the security of his person and home, and other rights under the constitution, will be intolerably imperilled and irreparably damaged by unscrupulous lawbreakers operating through State officials under the color of the law, and his good name and reputation further irreparably damaged by the continuation of a conspiracy to subject him to a psychiatric tyranny and terror in the private service of the aforesaid lawbreakers, operating under the color of the law by means of false reports to the police and other public authorities, and by wrongful use of a civil procedural disclosure rule in the State of New York to accomplish the same ends, including the deprivation of plaintiff's freedom or his home or the free use thereof, on the specious pretext of an "examination", it is further

ORDERED that defendant Sanford Silver, his agents, servants, employees and attorneys and all persons in active concert and participation with him be and they are hereby restrained from proposing or seeking or obtaining or issuing any court order or legal notice naming any psychiatrist or medical or "mental health" practitioner to examine plaintiff Norman A. Plotkin and from alleging or insinuating or causing others to allege or insinuate, directly or indirectly, under the color of any law or official or legal proceeding, that plaintiff is "mentally ill," or "psychotic," or that he has a "mental Condition," or that he requires "mental" or psychiatric or psychoanalytic examination, obervation, care, treatment or attention,

EW

and from falsely and baselessly committing or threatening or attempting to commit plaintiff, directly or indirectly, to a mental institution, or to compel plaintiff to submit to any medical or "mental health" practice, under the color of any law, and from causing, attempting, or threatening, directly or indirectly the false arrest of plaintiff, or otherwise to use any law enforcement officer or judicial officer to wrongfully harass, annoy or intimidate the plaintiff in his usual pursuits or while seeking legal redress; and it is further

ORDERED that service of this order to show cause and restraining order together with a copy of the papers hereto attached on defendants Sanford Silver, Irving Miller, Miriam Miller, Alan D. Miller, James Allen, and Louis J. Lefkowitz on or before Noon, August 26, 1968, either personally or by certified mail addressed to their respective post office addresses as follows: Sanford Silver, 291 Broadway, New York, N.Y.; Irving Miller, 641 Lexington Avenue, New York, N.Y., Miriam Miller, 73 Schoolhouse Lane, Roslyn Heights, New York; Alan D. Miller, 119 Washington Avenue, Albany, New York; James Allen, State Education Building, Albany New York; and Louis J. Lefkowitz, 80 Center Street, New York, N.Y., be deemed good and sufficient service.

Issued at 5 P.M., August 23, 1968.

Edward Weinfeld (E)
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

'68 Civil Action No. 34-11

NORMAN A. PLOTKIN,

Plaintiff

-against-

SANFORD SILVER, MIRIAM MILLER, IRVING MILLER, ELLEN MEADE, JAMES J. KELLEY, FRANCIS K. LOONEY, JOHN A. BIANCHI, ALAN D. MILLER, ANNE E. BERNSTEIN, JAMES ALLEN, and LOUIS J. LEFKOWITZ,

Defendants

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

NORMAN A. PLOTKIN, being duly sworn, deposes and says:

1. I am the plaintiff in the above entitled action and respectfully submit this affidavit in support of the annexed Order to Show Cause and Temporary Restraining Order Pending Hearing Thereon.

2. A temporary restraining order and preliminary injunction is being sought herein because of the wrongful collusion by officials of the State of New York with private wrongdoers, or their attorneys, who have subjected me, or caused me to be subjected, to the deprivation of my rights to the equal protection of the law, in violation of Title 42, Section 1983, U.S.C., and other constitutional rights and immunities, as hereinafter set forth, and who have put me in imminent danger of being further subject to such deprivation resulting in irreparable damage to me.

3. The aforesaid private wrongdoers are my relatives, Miriam Miller, my sister, and her husband, Irving Miller, defendants herein who conspired maliciously for base, sordid, and unlawful motives with Mary Sherman, an aunt by marriage, and one Fanny Rand, my late father's sister, to abuse the authority of the State of New York in order to damage me as described below, for which I am now seeking to recover damages from the aforesaid private wrongdoers in a civil action in the Sup Supreme Court of the State of New York, which action is now the scene of new wrongs committed against me under the color of the law.

4. While I am suing in the aforesaid action for money damages caused by these private wrongdoers, whom I have not see or had any contact with in over four years for the private wrongs committed by them up to the date of the commencement of that suit in July 1967, and for money damages in the action herein for wrongs committed through and by the malicious collusion of officials of the State of New York or of persons enjoying the facilities and authority thereof, with the aforesaid wrongdoers, continued wrongs committed against me since then and further wrongs now imminent

also under the authority of the State of New York render impossible adequate redress through money damages, and no amount of money can compensate adequately for the destruction of my legal status and constitutional right to be free from State invasion of my privacy, intrusion into my home, State harassment and coercion through threat of arrest or incarceration, wholly baselessly provoked by these original private wrongdoers with official collusion.

5. On August 7, 1964, I answered a telephone call from my mother who, during her convalescence from a broken shoulder requiring frequent special exercises, then supervised by me, was suddenly and secretly removed from her home by the said Irving Miller, only to have a loud, threatening voice interrupt her and demand: "What's the trouble? You'd better answer me! This is a Police Officer!" A week later a policeman appeared at my front door on a fabricated pretext. Complaint to the police brought no redress but instead collusion with the perpetrators of this abuse, the said Miriam and Irving Miller, by disregarding patent evidence of this abuse and furthering the aim of the aforesaid Millers, by maliciously, in bad faith, secretly recording and soliciting meaningless, but dangerously defamatory allegations in a legal context in the State of New York, that I was "mentally ill," and "needed psychiatric treatment," "although his (my) mother and OTHER CLOSE RELATIVES REFUSE TO ADMIT THIS FACT."

The original official police reports confirm the fact that the summoning of the police by these false reports was intended to cause my false arrest by fabricating and falsely and baselessly attributing to me first a "possible disturbance" and then, equally falsely and baselessly "threatening telephone calls," which could be expected to lead to my arrest and, in accordance with applicable police procedur based on such false reports, to an unwarranted psychiatric examination, greatly embarassing to me and my reputation. This is an intolerable situation, greatly aggravated now by the continuation of the same unscrupulous scheme through the Supreme Court of the State of New York, as described below, and calling for the protection of this court in the manner sought herein.

6. I am by profession an historian and college and university teacher and have always been wholly free from any legal blemish in this or any other jurisdiction whatsoever, and have enjoyed an impeccable reputation in all personal, professional and commercial relations and the esteem of my colleagues. I am entitled to the relief sought herein in order to be free from threats of false arrest or other unconstitutional deprivation of freedon, or violations of my privacy, or my good

name through an outrageously and odiously defamatory psychiatric or medical procedure, or to be committed, or compelled to submit to alleged psychiatric care, treatment or observation, by the authority of the State of New York.

7. In order for this court to appreciate and understand the basis for the present application, I shall attempt to point out some events in the background of this situation, which dates back to 1949, and to some of the far from trivial influences motivating the wrongful conduct of the defendants herein, Miriam and Irving Miller, which wrongful conduct is now being emulated and continued in their behalf by their attorney Sanford Silver, defendant in the action herein, in and through the New York State judicial and administrative procedures and personnel.

8. The aforesaid Miriam and Irving Miller are greedy, avaracious and jealous, and are resentful over the fact that in 1958, my mother now 75 years old, specifi in her last will and testament that I was to inherit the house in Flushing, where we both resided, instead of leaving said property by deed to me, ignoring them, and that in 1963 she deposited her moneys in a Western bank, recommended by me. It was at that time, judging by their conduct since then, that they conspired maliciously to cause me to lose control and possession and the ownership of said property, and recover their lost influence over my mother and her assets, by coercive measures, direct or indirect, based on the Mental Hygiene law of the State of New York with which they became very familiar through their personal and ~~and~~ professional associations, and since their experience with my late father, Joseph A. Plotkin, in 1949, causing him to be unlawfully committed to a sanitarium. Their other motives are similarly mean and base.

9. The aforesaid Miriam and Irving Miller acquired a dominating influence over my parents during my absence from my home in New York for several years during World War II in the course of my military service in the United States Army, and my second extended absence, soon thereafter, while I acquired the degree of Docteur d'Université de Paris, the basis of my present profession of historian and college and university teacher. The said Irving Miller, continuously present in his own home, also in the City of New York, during all of the above mentioned years, shared in this influence on my parents, directly or indirectly through my sister, his wife. On information and belief, during these years, my sister and her husband consulted one or more psychiatrists for personal psychoanalytic "analysis" or "treatment" or "help" (which are all synonyms) as a result of their faddist interest in its general desirability. They were also led to share their said interest by a relative by

marriage, one Dr. Iago Galdston, a psychiatrist, and psychoanalyst in private practice, and a prominent member of the New York Academy of Medicine. The said Miriam Miller served as a volunteer consultant to allegedly "mentally ill" persons in psychiatric hospital services or the Mental Health community services supported exclusively, or virtually so, by money coming directly or indirectly from the State of New York. Through said contacts and experiences both Millers became familiar with psychiatric terms and institutions and the legally coercive role of psychiatry.

10. During my visit to New York in the Spring and Summer of 1949 I learned that my sister had caused out father to consult or be "analysed" or "treated" by the aforementioned Dr. Iago Galdston. Soon after returning to Paris in the Fall of 1949, I was informed by letter from my mother, on behalf of my sister and brother, that my father was "worse" and hospitalized for electric shock treatments. One year thereafter, in November, 1950, while I was still in Paris, I received a letter notifying me of my father's suicide and burial.

11. I never doubted the good faith of my relatives at that time, or for eleven years following my return home in 1953, but I did begin to doubt it and make inquiries after I learned in 1964 that I was the victim of a "mental health" hoax, in which the said Miriam and Irving Miller provoked the police gratuitously and with premeditation to attempt unlawful acts of coercion, by either causing my false arrest or my submission to psychiatric examination and to brand me, baselessly, with a legally incapacitating "psychiatric" label.

12. My sister Miriam Miller and her husband were aided in the aforementioned planned provocation by their married daughter, Ellen Meade, who had learned of the wholly subjective ~~[illegible]~~ nature of "psychiatric" designations and the lack of obstacles to mental committments in her recent employment in the New York State Department of Mental Hygiene, where she gave consultations to allegedly "mentally ill" patients, or persons.

13. My inquiries then revealed that my father never consented to hospitalization or treatment in 1949 and that he was unlawfully hospitalized and treated, and that his suicide a year later, followed a threat of renewed "psychiatric incarceration" made directly or indirectly, by my sister, Miriam Miller, through my mother, supported by the aforesaid Fanny Rand, my late father's sister.

14. I then became aware that the modus operandi of the aforesaid relatives was to make directly or indirectly false reports to the police or other authorities, repeating them in various ways, until one or more would cause me to be subjected

to psychiatric examination or compulsory ~~psychiatric~~ examination as a means of exercising a psychiatric tyranny or terror under the color of the law.

15. I also learned that these relatives had long known of the ease and impunity with which "mental health" practitioners can, for the most sordid private or business motives, slander at will, "mentally ill" any individual whatsoever, whether for personal caprice, profit, or animosity, by unscrupulously abusing little known, imprecise technical psychiatric terms having no definition, or such contradictory ones, loosely and profusely used to label any and everyone by "mental health" practitioners, that anyone designated as a victim of these practitioners can easily be subjected to legally incapacitating innuendo or suspición. By these means these practitioners can compel anyone to become their patient or client, using legal coercion, unconstitutionally, by threat of denial of the most elementary right of freedom by the effective destruction of a designated victim's right to the equal protection of the law, by the denial of due process which is rendered meaningless by the legal use of meaningless terms.

16. I learned also that the aforesaid relatives planned to explain this meaningless technical jargon by persuading my mother (ignorant of verbal sophistries) to have her own internist, one Dr. Joseph Shapiro (who, like many physicians in New York, dabbles in Freudian concepts) recklessly and baselessly apply the label "psychotic" to me in private in July 1964, when he had last treated me merely for a "cold" more than a year before. The term "psychotic" I have learned from subsequent research, has a "psychoanalytic" meaning completely different from its common or legal meaning; in Freudian usage it means anyone who resists psychoanalytic practice, or virtually everyone. Several months later, the said Dr. Shapiro admitted in answer to my inquiry that by any possible use of such a term he meant to advise "help" for me, the said "help" being the currently prevailing jargon in the psychoanalytic milieu to designate its curious confessional practice. Its use then, however, predating by two weeks the police incidents mentioned above, was intended for coercion under the color of the law based on its legal meaning, both terms being known to the aforesaid Millers.

17. The use of psychiatric or psychoanalytic terms and concepts to defame and injure anyone is now common. A United States Senator, recently a presidential candidate was publicly labelled "paranoid" by an eminent psychiatrist who later said he didn't mean it. Freud himself heaped his brand of abuse on a former president of the United States. In fact, such technical terms, including

"mentally ill" (which is merely the Anglo-Saxon rendering of insane) have as much colloquial currency as a trivial epithet in the middle class milieu now as the use of the term "nuts" among the lower classes. But in a legal situation the use such "technical" terms gravely damages and incapacitates anyone so designated.

18. There is no legal definition of "mentally ill" or "mental health" or "mental condition." There is no legal authority for a compulsory psychiatric examination other than for convicted criminals with grave aberrations, and no other legal precedent for same except as part of an arrest procedure also in cases of aberration. State coercion is now being used to subject me as plaintiff to a psychiatric examination, for no stated purpose which is and can only be used constitutionally for lawful arrest or criminal sentencing procedures in cases of aberration, on the grounds that I am seeking legal redress against an attempt to subject me falsely to a psychiatric examination through official coercion under the color of the law. A person suing for damages for a false accusation of murder is not thereby put on trial for murder. Such an incredible abuse of logic and of legal power to burden the victim with the very incapacitating and defamatory act of coercion under the color of the law against which redress is sought is a denial of the very essence of due process of law. That is the case at present. A "psychiatric" examination is being sought under the color of CPLR 3121 in the aforesaid civil action in New York State, and the defendants therein on the pretext of a disclosure provision will achieve the essence of the wrongful aim of the aforesaid private conspiracy operating audaciously through the law. Such an examination, as a part of a criminal arrest procedure, imposes a crippling stigma in itself and creates a "mental health" record which, like a police record, is itself defamatory, and is intended to be so. The undefined legal use of "technical" terms is also a denial of the very essence of due process.

19. Psychoanalysis has no legal privilege and can have none constitutionally to obtain customers by coercion of anyone at all under the color of the law. That is the intent, as implied by the attorney for the defendants Miriam and Irving Hiller, the defendant herein, one Sanford Silver. Psychoanalysis as a confessional practice is akin to religious practice, constitutionally barred from being established by any government in the United States.

20. The only constitutional basis for legal coercion is police power exercised in the public interest. Neither psychoanalysis nor psychiatry has any constitutional basis for coercion under the color of the law. The Mental Hygiene Law in the State

of New York is derived from older "insanity" prodedures that once served society, based on elementary, evident, common sense judgment by everyone. Replacing the aforesaid term by a euphemism can not give present practitioners of psychiatry or psychoanalysis, through a pretended role as "expert" in determining psychic factors an authority derived from any law or custom or legal practice to deny in any way, or in any degree, the enjoyment of anyone's constitutionally protected personal rights, including the right to freedom, and the enjoyment of one's property, and the right to seek redress from wrongs by legal action and obtain a trial of the facts therein by a jury. A "medical" examination as a precondition for the enjoyment of such rights is itself a violation of the essence of due process.

21. I have read the Mental Hygiene Law in New York and been shocked to discover that we have a Lettre de Cachet, worse than that of the Old Regime, permitting the incarceration by arbitrary decision of State or local government officials or private physicians of anyone at all, for alleged reasons of "mental health," a term wholly undefined and undefinable. No notice is even given the victim for many days. Abuses in the name of "mental health" by the State of New York are growing with the swollen appropriations for the said State's Department of "Mental Hygiene," producing a growing bureaucracy with an unconstitutional authority over everyone and is aided by the extension of "psychic" factors, as is commonly known, in current medical practice, to diagnose many physical ailments, including rashes.

22. The defendants Miriam and Irving Miller, now aided by ~~xxx~~ defendant Sanford Silver, have maliciously sought to extend the abuses of forensic psychiatry with ~~thxx~~ which they are very familiar, to unlawfully deprive me of my most elementary legal right to live in my own home and answer my own telephone. No one is safe if such outrages under the color of the law are allowed.

23. The aforesaid Millers, now aided by the said Sanford Silver, knowing of the great influence of forensic psychiatry in gaining control of the coveted property of any deceased person by breaking wills, are now attempting, with the collusion of the said Sanford Silver and government officials to gain control of the ~~xxxxx~~ coveted property of living persons.

24. I have always regarded psychiatry and psychoanalysis as unscientific practices fraught with fraud and charlatanry, have never had any personal or professional contact with either, and share the opinion of many educated people that current practitioners of both are no more than "witchdoctors," or Tartuffes in medical gown. The aforesaid Millers, and their related psychiatrists and physicians know this, and are seeking under the color of the law to impose their personal and

professional practices and beliefs on me, for the reasons stated above, and suppress scoffing and disbelief, detrimental to their own professional interests.

25. After I brought suit for damages as stated above, I was served with a "Notice to Submit to a Mental or Psychiatric Examination" of December 18, 1967, under Civil Procedural Rule 3121 by the said Sanford Silver, defendant in the action herein, as attorney for the aforesaid Millers before the said John A. Bianchi, defendant herein, ~~xxxattorneyxforxthexaforesaidxMillersxbefore~~ "for a proper determination of the plaintiff's mental condition" for no stated reason and by no stated means. John A. Bianchi, is in fact, although the said Notice deceitfully omits stating it, Assistant Director of the Brooklyn State Hospital for the Mentally Ill, of the New York State Department of Mental Hygiene, and was to make such examination in his official office during his normal office hours.

26. I telephoned Dr. Alan D. Miller, Commissioner of Mental Hygiene who was shocked at first to learn that an official of his department had a private practice in State facilities. But later when my attorney made inquiry to him on my behalf, the said Dr. Miller provided an official excuse for the said Dr. Bianchi, declaring that such practice was allowed, insisting that it was "private" although in and on State facilities and time. Despite such an allegedly "private" character, the said Dr. Miller himself, in his officdal capacity, telegraphed me on the eve of the scheduled examination (which was already postponed) that it would not take place. I later learned that the said Dr. Miller in 1964 was Associate Commissioner for Community Mental Hygiene and as such responsible for the volunteer services with which my sister Miriam Miller was associated.

27. At a hearing on January 11, 1968, before the honorable Henry Latham, Justice of the Supreme Court of the State of New York the aforementioned defendant Sanford Silver, attorney for the said Millers, gave ~~xx~~ as a reason for urgency in advancing the date of a protective order I sought that I was "psychotic and dangerous." This was reported to me immediately afterward by my attorney, Arthur A. Snyder, Esq., of 590 Seventh Avenue, New York, N.Y., in the aforesaid damage suit. I have never had any contact with the said Sanford Silver and his shocking statement was a clear demonstration of the unlawful intent of his clients, my relatives, as was his issuing of the aforesaid Notice to Submit to a psychiatric examination and the naming of the said John A. Bianchi, thereon.

28. In the course of proceedings for a protective order to vacate the aforesaid Notice, denied by Judge Crisona, and in the appeal I took to the Appellate Division, which affirmed Judge Crisona without opinion, the said Sanford Silver

has audaciously continued the conspiracy of his clients by admitting their wrongful intent to "help" or "treat" me, and defamed me by attributing my suit to an "apparent persecution complex." It is evident that the said Sanford Silver is defending his clients' cause by attempting to accomplish one or more of its unlawful coercive aims, including committment under the Mental Hygiene Law, by distorting in the State judicial procedure itself a procedural rule for disclosure in a civil suit in a way never intended to be used, or ever previously so used, and constitutionally barred from being so used. In every previous case on record in the State of New York, or any state, no such "medical" examination was ever permitted unless a basis existed in a medical record. By this court order for such an "examination" a "record" will be created out of the thin air, irreparably damaging me, and denying me the equal ~~in~~ protection of the law, as clearly demonstrated by all previous cases. The procedural rule invoked as a basis for the said "examination" is for disclosure in medical controversies. No medical controversy is even alleged in the aforesaid suit, although Sanford Silver's Notice and Judge Crisona's opinion have tried to create one out of the thin air. There is no affidavit at all by defendants in the said action, nor even an allegation in the pleadings, let alone the necessary medical record always deemed necessary in every previous State court ruling to justify the use of this disclosure device. I have been and am in imminent danger of again being denied the equal protection of the law and the essence of due process of law in the violation of the right to be secure in my person and my house, and my right to freedom, by a new order for such an examination. Such an order is defamatory in itself. The examination would legally incapacitate me merely by creating out of the thin air the "medical record" which is legally as compromising as any police record, and is for that purpose wrongfully and baselessly sought by the aforesaid Millers.

29. Judge Crisona's opinion itself was defamatory and even justified the said Millers overt unlawful acts (and by implication the wrongful acts of their attorney, Sanford Silver, defendant herein,) on the grounds that the conspiracy itself creates a medical controversy and is justified unless my "mental health" (never even alleged, however remotely, to be in question, whatever this undefined and undefinible term may be construed to mean) is found to be "excellent," and, and thus barred urgently needed injunctive relief in the Supreme Court of the State of New York. ~~Xhx~~ By such meaningless and undefined terms are my most elementary constitutional rights being denied. Judge Crisona then appointed a former close neighbor of his

to "examine" me, one Anne E. Bernstein, psychiatrist.

30. Before bringing the aforesaid suit for damages, I wrote letters of complaint of unethical practice concerning the aforesaid Dr. Iago Galdston and his brother, Dr. Morton Galdston, for their treatment of my father and their involvement, directly or indirectly, in the wrongful acts directed against me to the American Medical Association and three local county medical societies. A Miss Spadafora informed me in reply, on behalf of the Kings County Medical Society, that Dr. Iago Galdston had just ceased being a member of the Kings County Medical Society, ~~that Dr. Iago Galdston had just ceased being a member of that society~~, and was now in the New York County Medical Society. The latter society, where both Drs. Galdston are members, dismissed my complaint quite arrogantly and justified the said treatment of my father. Both of the psychiatrists named to "examine" me are members of these societies, and the said Dr. Anne E. Bernstein, as a junior member, is not permitted to have a private practice.

The thrust of my damage suit is the wrongful acts committed by private persons under the color of the law and of the legal privilege of medical authority. To subject me to examination by members of the same profession or the same professional bodies is to create an unconstitutionally privileged class against whom no legal redress is possible.

The private psychoanalytic and psychiatric practice in general, and that of the said Anne E. Bernstein, in particular, at 1123 Fifth Avenue, New York, N.Y., is, on information and belief, substantially one of giving faddist consultations to anyone at all, and also systematic business or "market" consultations to business men or investors seeking a confident, and is not therefore a medical practice at all.

31. In seeking information about the physicians named in the aforesaid Notice and order I was subjected to further acts of attempted coercion and intimidation by officials of the State of New York. I wrote to the Commissioner of Education thereof, James Allen, who licenses physicians, to verify to credentials of the said Anne E. Bernstein, since the Einstein Medical College, publicly listed in medical directories as having awarded her a medical degree had no record of such a name. Various officials of the New York State Department of Education, answering for the Commissioner thereof, declined to disclose the official listing of the said Anne E. Bernstein's degree-granting institution, or of the name as it appeared on any diploma or academic record submitted by the said Anne E. Bernstein, and one

Edward Ellis, investigator for the said Department telephoned me to tell me to come to his office "to thrash this thing out" and demanded in an intimidating and accusing tone to know my "motive" for seeking this information. On information and belief this was done on the authority of the Commissioner James Allen to bar or discourage lawful inquiries which are not desired by physicians, and thereby deny the equal protection of the law to those seeking legal redress against physicians.

32. The technique of the original conspiracy of the aforesaid Millers has been to shelter their wrongful acts behind official or legally privileged persons in the belief that such persons are beyond the reach of effective legal action because of their automatic support by the legal service of the Attorney General of the State of New York. Such provision of official State legal services for persons, official or private, who commit private wrongs constitutes a denial of the constitutional right to the equal protection of the law since the victims of these wrongs face a grossly unequal contest having to pit their own limited private legal resources against those of the State.

33. I have been and am about to be further subject to the constant and imminent threat of unconstitutional deprivation of the security of my person and my home by or through officials of the State of New York and I enjoy no secure constitutional rights as long as the State of New York and its agencies provide facilities through the police, administrative departments, and the courts to operate private crimes against me.

34. On Monday, August 12, 1968, the defendant herein, Sanford Silver moved to appoint a new psychiatrist to "examine" me and thereby subject me to new unconstitutional coercion in furtherance of a wrongful scheme to intimidate and damage me by psychiatric procedures, baselessly, and in violation of all existing procedural safeguards, under the color of CPLR 3121 of the State of New York, before Henry Latham, Justice of the Supreme Court of the State of New York. All attempts to stay this proceeding in the Appellate Division having failed, the said Henry Latham is in the position of naming a new psychiatristo to again imperil me because of the affirmation, without opinion, of the said Appellate Division. There is also imminent danger that thesaid Sanford Silver, defendant herein, will again wrecklessly make false reports to public authorities to my grave prejudice. The order to show cause with temporary restraining order annexed herein will prevent such irreparable damage to me by restraining defendant Sanford Silver from proposing

or seeking or obtaining or issuing any order or notice naming any psychiatrist or any "mental health" practitioner to examine me, and from making false reports or otherwise wrongfully and irreparably damaging me under the color of the law, as specified in the said restraining order so that I will not have to live in imminent threat of unconstitutional deprivation of freedom through psychiatric tyranny for living in my own home and answering my own telephone, and seeking legal redress against unlawful abuses designed to prevent me from doing so, and issuance of the said order is therefore respectfully and urgently requested.

The issuance of the annexed order to show cause and temporary restraining order annexed herein will prevent irreparable injury to plaintiff and will not cause any harm or loss to defendants.

WHEREFORE, I respectfully pray that the relief demanded in the annexed order to show cause and temporary restraining order, together with such other relief as is proper, be granted and that an order to show cause and restraining order be issued as demanded in the urgent interests of protecting my constitutional rights.

Norman A. Plotkin

22 day of August 1968

NORMAN A. PLOTKIN

State of New York
County of New York

Signed in my presence this
22nd day of August, 1968.

Margaret K. Jennings
Notary

MARGARET K. JENNINGS
Notary Public, State of New York
No. 31-7082775
Qualified in New York County
Commission Expires March 30, 1970

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

'68 Civil Action No. 3411

NORMAN A. PLOTKIN,

Plaintiff

-against-

SANFORD SILVER, MIRIAM MILLER, IRVING MILLER, ELLEN MEADE, JAMES J. KELLEY, FRANCIS K. LOONEY, JOHN A. BIANCHI, ALAN D. MILLER, ANNE E. BERNSTEIN, JAMES ALLEN, and LOUIS J. LEFKOWITZ,

Defendants

COMPLAINT

The plaintiff, Norman A. Plotkin, pro se, for his complaint herein, alleges:

1. That at all times hereinafter mentioned, the plaintiff was and is a resident of the State of New York.

2. That the plaintiff was born in the State of New Jersey, is a professional historian and college and university teacher, has lived, worked, and studied in other states and countries, and has served in the United States Army in other states and countries, and has always been free from any legal blemish or medical or health impairment or disability, or any allegations thereof whatsoever, in this or any other jurisdiction whatsoever, and has always enjoyed an impeccable reputation in all personal, professional and commercial relations.

3. That Sanford Silver is an attorney at law in the State of New York representing defendants Miriam and Irving Miller in their defense in a separate suit for damages brought in July 1967 in the Supreme Court of the State of New York by the said Norman A. Plotkin, for private wrongs hereinafter described.

4. That Miriam Miller is the sister of the plaintiff herein, and that Irving Miller is married to the said Miriam Miller.

5. That Ellen Meade is the daughter of the said Miriam and Irving Miller.

6. That James J. Kelley was formerly and Francis K. Looney is at present the Police Commissioner of the County of Nassau in the State of New York.

7. That John A. Bianchi is the Assistant Director of the Brooklyn State Hospital for the Mentally Ill, an official institution of the Department of Mental Hygiene of the State of New York, and that Alan D. Miller is the Commissioner of Mental Hygiene of the State of New York, and the head of the said Department of Mental Hygiene.

8. That Anne E. Bernstein is a private psychiatrist at 1143 Fifth Avenue, New York, N.Y.

9. That James Allen is the Commissioner of Education of the State of New York,

and as such maintains official records of licensed physicians therein, and that Louis J. Lefkowitz is the Attorney General of the State of New York and as such defends officials of the State of New York in litigation brought against them for their official acts.

10. That the plaintiff has never seen or had any contact with defendants Sanford Silver, James J. Kelley, Francis K. Looney, John A. Bianchi, Anne E. Bernstein, James Allen, and Louis J. Lefkowitz.

11. That plaintiff has never seen defendant Alan D. Miller but did contact him personally by telephone in December 1967 and by letter in January 1968 to make an official inquiry and complaint.

12. That plaintiff has not seen or had any contact with defendants Miriam Miller, Irving Miller, or Ellen Meade, since June of 1964.

13. That defendant Miriam Miller was a volunteer worker giving psychiatric or psychiatrically related consultations to allegedly "mentally ill" persons in private "mental health" agencies wholly supported, or virtually so, through contractual arrangement by funds from the State of New York, administered by the Department of Mental Hygiene of the State of New York under the direct supervision of the then Associate Commissioner of Mental Hygiene for Community Affairs, the said Alan D. Miller.

14. That defendant Ellen Meade was a full time employee of the State of New York in the said Department of Mental Hygiene giving psychiatric or psychiatrically related consultations to allegedly "mentally ill" persons.

15. That during plaintiff's absence from his home for several years during World War II in the course of his military service in the United States Army and during his second extended absence shortly thereafter while acquiring the degree of Docteur d'Université de Paris, the defendants Miriam and Irving Miller, on information and belief, consulted one or more psychiatrists for personal psychoanalytic "analysis" or "treatment" or "help" (which are all synonyms) as a result of their faddist interest in its general desirability, and of the influence of their relative by marriage, one Dr. Iago Galdston, a psychiatrist and psychoanalyst in private practice, and a prominent member of the New York Academy of Medicine.

16. That the plaintiff herein has always regarded psychiatry and psychoanalysis as unscientific practices fraught with fraud and charlatanry, has never had any interest in or personal or professional contact with either said practice, and has always shared the opinion held by many educated people that current prac-

titioners of said practices are no more than "witchdoctors" or ~~[illegible]~~ Tartuffes in medical gown, and all of plaintiff's aforesaid opinions have always been known to defendants Miriam and Irving Miller, and on information and belief, have always been known to the related psychiatrists and physicians of defendants Miriam and Irving Miller.

17. That during plaintiff's aforesaid absence from his home, defendants Miriam and Irving Miller acquired a dominating influence over plaintiff's parents and in 1949 the said Miriam Miller caused plaintiff's father to consult or be "analysed" or "treated" by the aforementioned Dr. Iago Galdston, then to be hospitalized for electric shock treatments, followed one year later by plaintiff's father's suicide under threat from the said Miriam Miller, directly or indirectly, of renewed "psychiatric" incarceration."

18. That on information and belief defendants Miriam Miller, Irving Miller, and Ellen Meade learned through their ~~fm~~ aforesaid contacts and experiences of the legally coercive role of "psychiatric incarceration" thgough unconstitutional administrative procedures that make the Mental Hygiene Law of the State of New York a veritable Lettre de Cachet, and of the forensic uses of psychiatry in gaining control of property and in removing and imposing guilt in criminal proceedings, and became familiar with psychiatric terms and institutions, and of psychoanalytic terms, and of the extraordinarily imprecise and contradictory definitions, or total lack thereof, of technical-sounding terms in both practices, and of the basic contradiction between our system of law consisting of precise and clear and specifically defined acts and the Freudian or psychiatric system of sweeping and meaningless generalizations, and of the consequent ease and impunity with which ~~i~~ "mental health" or medical practitioners can and frequently do, for the most sordid private or business motives, exploit this contradiction to slander at will as "mentally ill" (a term undefined and undefinable) any individual whatsoever, thereby subjecting any designated victim to legally incapacitating innuendo or suspicion, and unconstitutional coercion under the color of the law by depriving the said victim of the most elementary right to the equal protection of the law and to the essence of due process.

19. That in or about 1964 defendants Miriam Miller and Irving Miller learned of the recent transfer of title of plaintiff's home, where he resided with his mother, then 71 years of age, from plaintiff's mother to plaintiff, and of removal of plaintiff's mother's moneys to another state, and maliciously conspired together

to regain control over plaintiff's mother's assets by removing plaintiff's mother secretly from her home and preventing plaintiff from further contact with his mother and from arranging or providing adequate medical care for her fractured shoulder suffered during an~~a~~ accident at defendants Millers' home, by ~~attempting~~ subjecting plaintiff to unlawful official coercion and police oppression, by attempting to cause plaintiff's false arrest on wholly fabricated charges in order to subject him to a legally damaging "psychiatric" examination, thereby compelling him to be subjected to psychiatric or psychoanalytic practices of defendant Miriam and Irving Miller's own belief, persuasion, and interest, and that said defendants Miriam and Irving Miller carefully prepared maliciously beforehand therefor by arranging through plaintiff's mother with one Dr. Joseph Shapiro to attach to plaintiff the meaning_less Freudian label of "psychotic" designating at at will any non-customer of psychoanalysis, with the malicious intent that such technical-sounding term would be understood in its common or legal meaning and thereby create a basis for committment proceedings against plaintiff under the Mental Hygiene Law of the State of New York, that would deprive plaintiff of his constitutional right to freedom through an arbitrary administrative procedure, or drive him out of his home under the threat thereof.

20. That defendants Miriam and Irving Miller further conspired, as hereinabove described, with one Mary Sherman, plaintiff's relative by marriage, whose son, Marvin Sherman, is also a psychiatrist, and with one Fanny Rand, plaintiff's father's sister, and plaintiff is seeking damages jointly from said Miriam and Irving Miller and said Mary Sherman and Fanny Rand in the aforesaid suit in the Supreme Court of the State of New York.

21. That in furtherance of the aforesaid conspiracy defendants Miriam and Irving Miller fabricated pretexts for summoning the police of Nassau County to coerce plaintiff from the lawful use of his home and telephone by violating his constitutional right to be secure in his person and his house and did cause such violation by having plaintiff's mother telephone him on August 7, 1964 and then having one Patrolman Kenneth Schill intrude unlawfully and maliciously onto such telephone call to coerce him by official threats of implied arrest with the veritable intent to cause his false arrest.

22. That defendant James J. Kelley, then Commissioner of Police in the said County of Nassau unlawfully authorized and approved said Patrolman Kenneth Schill's violation of plaintiff's right To be secure in his person and his house and furthe

to regain control over plaintiff's mother's assets by removing plaintiff's mother secretly from her home and preventing plaintiff from further contact with his mother and from arranging or providing adequate medical care for her fractured shoulder suffered during an~~x~~ accident at defendants Millers' home, by ~~attempting~~ subjecting plaintiff to unlawful official coercion and police oppression, by attempting to cause plaintiff's false arrest on wholly fabricated charges in order to subject him to a legally damaging "psychiatric" examination, thereby compelling him to be subjected to psychiatric or psychoanalytic practices of defendant Miriam and Irving Miller's own belief, persuasion, and interest, and that said defendants Miriam and Irving Miller carefully prepared maliciously beforehand therefor by arranging through plaintiff's mother with one Dr. Joseph Shapiro to attach to plaintiff the meaningless Freudian label of "psychotic" designating at at will any non-customer of psychoanalysis, with the malicious intent that such technical-sounding term would be understood in its common or legal meaning and thereby create a basis for committment proceedings against plaintiff under the Mental Hygiene Law of the State of New York, that would deprive plaintiff of his constitutional right to freedom through an arbitrary administrative procedure, or drive him out of his home under the threat thereof.

20. That defendants Miriam and Irving Miller further conspired, as hereinabove described, with one Mary Sherman, plaintiff's relative by marriage, whose son, Marvin Sherman, is also a psychiatrist, and with one Fanny Rand, plaintiff's father's sister, and plaintiff is seeking damages jointly from said Miriam and Irving Miller and said Mary Sherman and Fanny Rand in the aforesaid suit in the Supreme Court of the State of New York.

21. That in furtherance of the aforesaid conspiracy defendants Miriam and Irving Miller fabricated pretexts for summoning the police of Nassau County to coerce plaintiff from the lawful use of his home and telephone by violating his constitutional right to be secure in his person~~x~~ and his house and did cause such violation by having plaintiff's mother telephone him on August 7, 1964 and then having one Patrolman Kenneth Schill intrude unlawfully and maliciously onto such telephone call to coerce him by official threats of implied arrest with the veritable intent to cause his false arrest.

22. That defendant James J. Kelley, then Commissioner of Police in the said County of Nassau unlawfully authorized and approved said Patrolman Kenneth Schill's violation of plaintiff's right To be secure in his person and his house and further

injured the plaintiff for attempting lawfully to enforce his right to the equal protection of the laws through a complaint against the aforesaid patrolman by ordering and approving an "investigation" that willfully and maliciously concealed evidence of official wrongdoing and sought and recorded legally incapacitating and defamatory allegations, falsely, fraudulently, and baselessly, against plaintiff in willful and malicious collusion with defendants Miriam Miller and Irving Miller, as hereinbelow described, intended to justify said patrolman's and defendants' Millers' unlawful conduct and damage plaintiff.

23. That the defendants Miriam and Irving Miller further conspired to injure and damage plaintiff, and did damage and injure plaintiff for attempting lawfully to enforce his right to the equal protection of the law by fabricating out of the thin air and having officially recorded on or about August 20, 1964, in the aforesaid "investigation" allegations that plaintiff was "mentally ill," knowing and intending such record to be legally incapacitating and damaging to plaintiff, in furtherance of defendants Miriam and Irving Miller's original conspiracy.

24. That the defendant Francis M. Looney, present Commissioner of Police of the said County of Nassau, did willfully and maliciously in 1967 and 1968 defy and evade the lawfully ordered disclosure of official records of the aforementioned police incidents in order to conceal them from plaintiff and thereby did damage plaintiff further by depriving him of his lawful right to such records necessary in attempting lawfully to enforce his right to the equal protectio of the law.

25. That defendant Ellen Meade conspired maliciously for base and sordid motives with defendants Miriam and Irving Miller on or about August 20, 1964 in the aforesaid "investigation" to further injure plaintiff and did injure plaintiff for attempting to secure his right to the equal protection of the law, by fabricating and causing to be recorded officially the legally damaging and incapacitating allegation that plaintiff was "mentally ill."

26. That plaintiff then began to doubt the good faith of defendants Miriam and Irving Miller, and other relatives, in treating plaintiff's father prior to the latter's suicide in 1950, and plaintiff then began an inquiry into the circumstances of his father's said treatment and subsequent suicide.

27. That after plaintiff began the aforesaid inquiry and brought the aforementioned suit in the Supreme Court of the State of New York, defendants Miriam and Irving Miller renewed and continued their original conspiracy through their attorney in

the aforementioned suit, the defendant herein Sanford Silver, to impede, hinder, obstruct or defeat plaintiff's lawful inquiry aforesaid and lawsuit for damages and other proceedings to promote the due course of justice.

28. That the defendant Sanford Silver, in furtherance of the aforesaid renewed conspiracy, knowingly and maliciously labelled the plaintiff with a legally damaging and incapacitating designation of a suspect "mental condition" by serving a Notice on plaintiff in the aforesaid action under the color of CPLR 3121, a "medical" disclosure rule in the civil procedure in the Supreme Court of the State of New York, and further knowingly and maliciously ordered plaintiff in the said Notice to submit to a "psychiatric examination" for no stated purpose, a legally incapacitating procedure used exclusively as a part of criminal arrest or sentencing procedures in cases of grave aberration.

29. That the defendant Sanford Silver knowingly and maliciously further damaged plaintiff with a legally damaging and incapacitating label by designating one John A. Bianchi, who is the Assistant Director of the a New York State official institution for the mentally ill to "psychiatrically examine" plaintiff, at the official premises of the said State institution, and thereby accomplish one of the aims of the original conspiracy under the color of the law.

30. That defendant Sanford Silver willfully and maliciously and unlawfully made a false report of a non-existent emergency on January 11, 1968 to Judge Henry Latham in the Supreme Court of the State of New York, and knowingly deceived the said court thereby, to plaintiff's grave prejudice and damage, by stating that the plaintiff herein is "psychotic and dangerous."

31. That the defendant Sanford Silver did all the acts alleged in the three immediately preceding paragraphs in order to bring about plaintiff's psychiatric incarceration, or observation, or examination, or "treatment," or "help" under the color of the law by violating plaintiff's constitutional right to be secure in his person and to be free.

32. That the defendant John A. Bianchi, Assistant Director of the Brooklyn State Hospital for the Mentally Ill knowingly and maliciously and unlawfully provided official facilities of the State of New York, for his private gain, to defendants Miriam and Irving Miller and Sanford Silver, in collusion with the defendant Ellen Meade, to further injure plaintiff for attempting lawfully to enforce his right to the equal protection of the law.

33. That the defendant Alan D. Miller, Commissioner of Mental Hygiene of the State of New York knowingly and maliciously and unlawfully authorized and approved the provision of official facilities of the State of New York for the private gain of an employee thereof in the service of defendants Miriam Miller, Irving Miller, and Sanford Silver, in collusion with defendant Ellen Meade, to further injure plaintiff's good name and reputation and subject him to the imminent threat of unconstitutional deprivation of his freedom and violation of his right to be secure in his person for attempting to enforce his right to the equal protection of the law.

34. That defendant Anne E. Bernstein, psychiatrist, next named by court substitution to implement the defendants Miriam and Irving Miller's original conspiracy by subjecting plaintiff to a legally incapacitating and damaging "psychiatric examination" for no stated purpose as a criminal arrest procedure, caused plaintiff willfully and maliciously to be subjected to a new act of attempted official coercion, directly or indirectly, in order to conceal her background and associations with Judge James J. Crisona, whose order named her, and the psychiatrists and physicians related to the defendants Miriam and Irving Miller, by causing one Edward Ellis, official investigator of the State of New York, to telephone plaintiff coercively on or about May 9,1968, in order to prevent plaintiff from pursuing his lawful inquiry, and thereby further injured plaintiff for attempting to enforce his right to the equal protection of the law.

35. That on information and belief the said Anne E. Bernstein was formerly a close neighbor of the said James J. Crisona, the judge whose order named her by substitution for the defendant John A. Bianchi to conduct the aforesaid legally damaging and incapacitating "psychiatric examination" of plaintiff, and was a junior member of the Medical Association of the County of New York, and as such not permitted to have a private practice, and was thereby a junior colleague of the same professional body as the related psychiatrist and physicians of the defendants Miriam and Irving Miller, and could reasonably be expected to be subject to or participate in influences detrimental to the interest of the plaintiff, and to prevent the disclosure of the aforesaid information caused the coercive act of the said Edward Ellis hereinabove described.

36. That on information and belief the said Anne E. Bernstein has an office at 1143 Fifth Avenue, New York, N.Y., for the practice of psychoanalysis, the said premises being exclusively occupied, except for the landlord, by psychoanalysts

engaged in such practice, which consists of periodic consultations with persons desirous of such for personal, faddist, or business reasons, and is not a medical practice at all, and that all such practitioners benefit by legal privilege intended for bona fide medical practice, and that the defendants Miriam and Irving Miller and Sanford Silver's abuse of CPLR 3111 hereinabove described is a further attempt to extend such legal privilege to private practice for the wrongful motives stated above.

37. That defendant James Allen, Commissioner of Education of the State of New York, willfully and maliciously authorized and approved the aforesaid act of official coercion by the said Edward Ellis and did injure plaintiff thereby for attempting lawfully to enforce his right to the equal protection of the law and lawfully requesting therefor official information in the said James Allen's custody concerning the defendant Anne E. Bernstein.

38. That the defendants Miriam and Irving Miller, Ellen Meade, and Sanford Silv have willfully and maliciously sought to spread their conspiracy to officials of the State of New York, and have succeeded in doing so, in order to have the legal resources of the State of New York through the Attorney General thereof, Louis J. Lefkowitz, aid the aforesaid conspiracy by providing official legal defense for private persons or for officials in private service, thereby gravely impairing plaintiff's effective right to the equal protection of the laws, and that the said Louis J. Lefkowitz may be expected to do so unless enjoined from doing so by this court.

39. That by reason of all the aforesaid, the plaintiff has been deprived of his constitutional right to be secure in his person and his house, and has been furthe injured for attempting to enforce his right to the equal protection of the laws, and is in imminent danger of further deprivation of his constitutional right to be secure in his person against unreasonable search by being subjected to a criminal procedure in the form of a psychiatric examination with no stated purpose for attempting to enforce through a civil law suit in the State of New York, his right to the equal protection of the laws and his time and effort have been divert from his profession, and he has been damaged thereby in his professional life, he has suffered loss of income, incurred onerous legal expenses, his good name and reputation have been impaired, in all to the plaintiff's damage in the sum of Nine Hundred Thousand Dollars ($900,000).

Wherefore the plaintiff duly demands judgment against defendant Sanford Silver in the sum of Three Hundred Thousand Dollars ($300,000), demands judgment against Miriam Miller and Irving Miller in the sum of One Hundred and Fifty Thousand Dollars ($150,000), demands judgment against James J. Kelley and Francis K. Looney in the sum of Seventy-five Thousand Dollars ($75,000), demands judgment against John A. Bianchi in the sum of Fifty Thousand Dollars ($50,000), demands judgment against Alan D. Miller in the sum of Two Hundred and Fifty Thousand Dollars ($250,000), and demands judgment against Anne E. Bernstein in the sum of Twenty-five Thousand Dollars ($25,000), together with the costs and disbursements of this action, and duly demands further that defendants Sanford Silver, Miriam Miller, Irving Miller, Alan D. Miller, James Allen, and Louis J. Lefkowitz be enjoined from doing any of the acts complained of, as specified in the annexed order to show cause.

NORMAN A. PLOTKIN
Plaintiff, Pro Se.
P.O. Address:
312 West 103 Street
New York, N.Y. 10025